TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 736.

THOMAS FRANKLIN, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED JANUARY 14, 1910.

(21,962.)

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INDEX.

	Original.	Print
Petition for writ of error	1	1
Order allowing writ of error	3	2
Writ of error, with affidavit of service attached	5	3
Clerk's certificate	6	3
Indictment (5438)	7	4
Demurrer	25	13
Order overruling demurrer	27	14
Supplemental demurrer	28	15
Indictment (5438)	36	19
Demurrer	88	49
Memorandum opinion, Hand, J	91	51
Indictment (5391 and act of July 7, 1898)	93	52
Demurrer	106	59
Order overruling demurrer	107	60
Supplemental demurrer	108	60
Memorandum opinion, Hand, J	110	62
Order for consolidation	111	62
Motion in arrest of judgment	113	63
Order for admission to bail	115	64
Bail bond	117	65
Assignment of errors	124	68
Certificate as to jurisdiction	126	69
Affidavit of service of citation	128	70
Citation	129	71

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 2, 1910.

1 United States Circuit Court, Southern District of New York.

Petition for Writ of Error.

THE UNITED STATES OF AMERICA
vs.
THOMAS FRANKLIN.

Indictment: Sec. 2, Act of July 7, 1898, and Section 5438, R. S., Consolidated.

To the Honorable United States Circuit Court for the Southern District of New York:

Your petitioner, Thomas Franklin, respectfully shows unto your honor that the above entitled cause came on to be heard on the 13th day of December, 1909, in the United States Circuit Court for the Southern District of New York; that your petitioner filed certain demurrers to the indictments in the said cause, which were duly argued and submitted to the Honorable Learned Hand, Judge presiding in said court, and said several demurrers were duly overruled; that said cause then came on for trial and on motion of H. A. Wise, Esq., United States Attorney for the said district the two indictments under section 5438 R. S., U. S., and the indictment under Section 2, Chapter 576, Act of July 7th, 1898, were consolidated and a nolle prosequi entered to the first, second and third counts of the indictment under the said Act of July 7th, 1898. Your petitioner further shows that on the said 13th day of December, 1909, after trial and conviction and before judgment, he made a motion in arrest of judgment in said cause, which motion was on the same day denied by the said court, and on the said 13th day of December, 1909, the Court pronounced sentence upon petitioner.

Petitioner shows that there has been manifest injury done him in the proceedings, trial, and sentence in said cause.

2 Wherefore petitioner prays to be allowed a writ of error to the Supreme Court of the United States from and to supersede the judgment, made and rendered by the said Honorable United States Circuit Court for the Southern District of New York on the said 13th day of December, 1909, sentencing petitioner; that when a writ of error is sued out, the execution of the sentence be suspended and the defendant be admitted to bail pending said writ of error; and that this honorable Court make all necessary orders in the premises and cause citation in due form to issue. Dated at New York, this the 14th day of December, 1909.

S. T. ANSELL,
Attorney for Petitioner.

[Endorsed:] U. S. Circuit Court, Southern District N. Y. Filed Dec. 14, 1909. John A. Shields, Clerk.

3 The Circuit Court of the United States, Southern District of New York.

THE UNITED STATES OF AMERICA
vs.
THOMAS FRANKLIN.

Order Granting Writ of Error, Supersedeas.

It appearing to the Court that an assignment of errors having been filed according to law and the rules of the Court in the above-entitled cause, and a writ of error to the Supreme Court of the United States having been prayed for, it is ordered that the writ of error be granted; and it is further ordered that when a writ of error is sued out the execution of the sentence be suspended pending such writ of error.

Dated this 14th day of December, 1909.

LEARNED HAND,
U. S. Judge.

[Endorsed:] U. S. Circuit Court, Southern District, N. Y. Filed Dec. 14, 1909. John A. Shields, Clerk.

4 Circuit Court of the United States, Southern District of New York.

THOMAS FRANKLIN, Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA, Defendant in Error.

Affidavit of Service.

Personally appeared before me the undersigned authority, S. T. Ansell, who being duly sworn says:

That he is the attorney for the plaintiff in error in the above cause.

That as such on the 14th day of December, 1909, at the office of the U. S. Attorney for the Southern District of New York, in the Federal Building, Borough of Manhattan, New York City, he served upon H. A. Wise, Esq., U. S. Attorney for said district a copy of the writ of error, citation, assignment of errors and certificate, in said cause, by delivering the same to him personally in his office at the time and place aforesaid.

S. T. ANSELL.

Sworn to and subscribed before me this the 17th day of December, 1909.

E. T. McENANY,
U. S. Commissioner for Said District.

[Seal Edward T. McEnany, United States Commissioner Southern District of New York.]

[Endorsed:] 2. 149. U. S. Circuit Court, Southern District, N. Y. Filed Dec. 20, 1909. John A. Shields, Clerk.

5 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judges of the Circuit Court for the Southern District of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the Circuit Court for the Southern District of New York, in the Second Circuit, before you, or some of you, between the United States of America, plaintiff, and Thomas Franklin, defendant, a manifest error hath happened to the great damage of the said Thomas Franklin, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ: so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 14 day of December, in the year of our Lord one thousand nine hundred and nine.

6 JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

[Seal of U. S. Circuit Court, South. Dist. New York.]

Allowed by
LEARNED HAND,
United States Judge for the Second Circuit.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, by virtue of the foregoing Writ of Error, and in obedience thereto, do hereby certify, that the pages numbered from one to one hundred and thirty inclusive, contain a true and complete transcript of the record and proceedings had in said Court in the cause of Thomas Franklin, Plaintiff in Error, vs. The United States of America, Defendant in Error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 10 day of January, in the

year of our Lord one thousand nine hundred and ten and of the Independence of the United States the 134th.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS, *Clerk.*

7 [Endorsed:] 2. 149. Circuit Court of the United States. Southern District of New York. Thomas Franklin Plaintiff in Error vs. United States of America Defendant in Error. E. & A. D. 3020. Writ of error. S. T. Ansell, Counsel for Plaintiff in Error. U. S. Circuit Court, Southern District, N. Y. Filed Dec. 14, 1909. John A. Shields, Clerk.

8 *Indictment.*

Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

At a Stated Term of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, begun and held in the City of New York, within and for the District and Circuit aforesaid, on the 2nd Wednesday of May, in the year of our Lord one thousand nine hundred and nine and continued by adjournment to and including the 15th day of June, in the year of our Lord one thousand nine hundred and nine.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The Jurors of the United States of America within and for the District and Circuit aforesaid, on their oath present that Thomas Franklin, late of the City and County of New York, in the District and Circuit aforesaid, yeoman, heretofore, to wit, on the eighteenth day of July, in the year of our Lord one thousand nine hundred and six, at West Point, New York, in the District and Circuit aforesaid, unlawfully did make and present and cause to be made and presented to an officer in the military service of the United States, to wit, to Albert L. Mills, then and there Brigadier-General in the Army of the United States and Superintendent of the United States Military Academy at West Point, New York, in the District and Circuit aforesaid, for approval by the said officer as such Superintendent aforesaid, he, the said Albert L. Mills as such Superintendent being then and there authorized to approve the same, a certain claim upon and against the Government of the United States, which said claim was upon an account purporting to be the account of him, the said Thomas Franklin, for provisions and cartage therefor, furnished by him to and for the Cadet Mess of the United States Military Academy aforesaid, and which said claim was in the words and figures following, to wit:

9

United States Military Academy.

The Cadet Mess

To Thos. Franklin, Dr.

1906.				
May 26.	To 6 bbls. Apples, at 7.00	42 00		
	" 10 bxs. Onions, at 2.00	20 00		
	" 1 bag Carrots	1 75		
	" 1 bx. Parsley	1 50		
	" 1 " Green Peppers	4 00		
	" Cartage	95	70	20
28.	" 25 bxs. Chickens, 1120 lbs., at 18¢	201 60		
	" 23 bxs. Fowls, 1736 lbs., at 16¢	277 76		
	" Cartage	2 40	481	76
June 4.	" 5 bxs. Lemons, at 4.50	22 50		
	" 160 qts. Strawberries, at 12¢	19 20	41	70
6.	" 160 qts. Strawberries, at 14¢	22 40	22	40
8.	" 6 bbls. Apples, at $7	42 00		
	" 40 doz. Celery, at 80¢	32 00		
	" 160 quarts Strawberries, at 14¢	22 40		
	" Cartage	45	96	85
9.	" 200 bunches Radishes, 2¢	4 00		
	" 200 " Young Onions, 2¢	4 00		
	" Cartage	10	8	10
			$721	01

10

	Carried forward		$721	00
June 11.	To 65 boxes Lemons, at $5		325	00
" 14.	" 5 " Oranges, at 4.50	22 50		
	" Cartage	25	22	75
14.	" 754 lbs. Ducks, at 18¢	135 72		
	" 1144 " Chickens, at 18¢	205 92		
	" Cartage	55	342	19
19.	" 30 Crates Onions, at $2.00	60 00		
	" Cartage	1 50	61	50
21.	" 1065 lbs. Ducks, at 18¢	191 70		
	" Cartage	35	192	05
25.	" 20 bbls. Potatoes, at 3.25	65 00		
	" 1 crate Green Peppers	3 00		
	" [illegible] bunches Parsley	3 00		
	" [illegible] oz. Carrots, at 40¢	3 20		
	" 14 boxes Oranges, at 4.00	56 00		
	" 10 " Cantaloupes, at 2.00	20 00		
	" Cartage	2 35	152	55
26.	" 3 crates Egg Plant-, at 2.50	7 50		
	" 200 bunches Radishes, 1½¢	3 00		
	" Cartage	20	10	70
			$1827	75

11

	Carried forward			$1827 75
June 27.	To 5 crates Cantaloupes, at 2.50.....	12 50		
	" Cartage		25	12 75
" 30.	" 15 crates Cantaloupes, at 2.50.....	37 50		
	" Cartage		75	38 25
" 30.	" 4481 lbs. Chicken-, at 18¢.....	806 58		
	" Cartage	4 50		811 08
				$2689 83

This account is correct and just.

(Sd.) THOS. FRANKLIN,
Captain, Commissary Treasurer, U. S. M. A.

The above statement of account against the Cadet Mess, U. S. Military Academy, is correct and just, and the receipt from the Treasurer of the U. S. Military Academy of Two thousand six hundred and eighty nine & 83/100 Dollars, in payment in full is hereby acknowledged.

(Signed) THOS. FRANKLIN.

[Endorsed:] The Cadet Mess. Voucher No. 66. Thos. Franklin. Statement ending —— —, 19—. Check, No. 49242. $2689 83/100. Currency, ——. Total ——.

12 and which said claim at the time and place when and where it was so made and presented and caused to be made and presented, was false, fictitious and fraudulent in the following respects, to wit; he, the said Thomas Franklin then and there well knowing the same to be false, fictitious and fraudulent in the following respects, to wit:

In that the items therein under date of May 26, 1906, "to 6 bbls. Apples at $7.00, $42.00; to 10 bxs. Onions at $2.00, $20.00; to 1 bag Carrots, $1.75; to 1 bx. Green Peppers, $4.00" should have been instead thereof respectively, "to 6 bbls. Apples at $6.50, $39.00; to 10 bxs. Onions at $1.60, $16.00; to 1 bag Carrots, $1.40; to 1 bx. Green Peppers, $3.00", and in that the items therein under date of May 28, 1906, "to 25 bxs. Chickens, 1120 lbs., at 18¢, $201.60; to 23 bxs. Fowls, 1736 lbs. at 16¢ $277.76", should have been instead thereof respectively, "to 25 bxs. Chickens, 1020 lbs., at 14¢, $142.80; to 23 bxs. Fowls, 1731 lbs. at 14¢, $242.34", and in that the item therein under date of June 4, 1906, "to 5 bxs. Lemons, at $4.50, $22.50," should have been instead thereof, "to 5 bxs. Lemons, at $4.25, $21.25", and in that the items therein under date of June 8, 1906, "to 6 bbls. Apples at $7.00, $42.00; to 40 doz. Celery at 80¢ $32.00," should have been instead thereof respectively, "to 6 bbls. Apples at $6.00, $36.00; to 40 doz. Celery at 75¢, $30.00", and in that the items therein under date of June 9, 1906, "to 200 bunches Radishes, 2¢, $4.00; to 200 bunches Young Onions, 2¢, $4.00", should have been instead thereof respectively "to 200 bunches Rad-

ishes, 1¾¢ $3.50, to 200 bunches Young Onions, 1¼¢, $2.50", and in that the item therein under date of June 11, 1906 "to 65 boxes Lemons at $5.00, $325.00" should have been instead thereof "to 65 boxes Lemons at $4.75, $308.75", and in that the items therein under date of June 14, 1906, "to 5 boxes Oranges, $4.50, $22.50, to 754 lbs. Ducks at 18¢, $135.72, to 1144 lbs. Chickens at 18¢, $205.92", should have been instead thereof respectively, "to 5 boxes Oranges, $4.00, $20.00, to 754 lbs. Ducks at 13¢, $98.02, to 1144 lbs. Chickens at 14¢, $160.16", and in that the item therein under date of June 19, 1906 "to 30 crates Onions at $2.00, $60.00",
13 should have been instead thereof "to 30 crates Onions at $1.40, $42.00", and in that the item therein under date of June 21st, 1906, "to 1065 lbs. Ducks, at 18¢, $191.70," should have been instead thereof "to 1065 lbs. Ducks at 13½¢, $143.78", and in that the items therein under date of June 25th, 1906, "to 1 crate Green Peppers, $3.00, to 100 bunches Parsley, $3.00, to 8 doz. Carrots at 40¢, $3.20, to 14 bxs. Oranges at $4.00, $56.00, to 10 bxs. Cantaloupes at $2.00, $20.00" should have been instead thereof respectively "to 1 crate Green Peppers, $2.50, to 100 bunches Parsley, $2.50, to 8 doz. Carrots at 35¢, $2.80, to 14 bxs. Oranges at $3.75, $52.50, to 10 bxs. Cantaloupes at $1.50, $15.00", and in that the item therein under date of June 27th, 1906 "to 5 crates Cantaloupes at $2.50, $12.50" should have been instead thereof "to 5 crates Cantaloupes at $2.25, $11.25", and in that the items therein under date of June 30th, 1906, "to 15 crates Cantaloupes at $2.50, $37.50, to 4481 lbs. Chickens, at 18¢, $806.58" should have been instead thereof respectively, "to 15 crates Cantaloupes at $2.00 $30.00, to 4470 lbs. Chicken at 14¢, $625.80", and in that each and every item therein for cartage, on the articles therein set forth, except the item "June 26, 1906, to cartage, 20¢", to wit, "May 26, 1906, Cartage, 95¢, May 28, 1906, Cartage, $2.40, June 8, 1906, Cartage 45¢ June 9, 1906, Cartage, 10¢, June 14, 1906, Cartage, 25¢, June 14, 1906, Cartage, 55¢, June 19, 1906, Cartage, $1.50, June 21, 1906, Cartage, 35¢, June 25, 1906, Cartage, $2.35, June 27, 1906, Cartage, 25¢, June 30, 1906, Cartage, 75¢, and June 30, 1906, Cartage, $4.50," was, as the said Thomas Franklin then and there well knew, utterly and entirely false, fictitious, and fraudulent, in that the said Thomas Franklin neither had in truth nor in fact paid any sum whatever for cartage upon the articles covered by the said account, nor had he become or rendered himself liable for
14 cartage on such articles in any way or manner whatsoever, and in that no sum whatsoever was then due him, the said Thomas Franklin, on account of cartage upon the said articles; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Sec. 5438 R. S.)

POOR COPY

15 *Second Count.*

And the Jurors aforesaid, on their oaths aforesaid, do further present, that Thomas Franklin, late of the City and County of New York, in the District and Circuit aforesaid, yeoman, heretofore, to wit, on the twenty-first day of September, in the year of our Lord one thousand nine hundred and six, at the Southern District of New York, and within the jurisdiction of this Court, unlawfully did make and present and cause to be made and presented to an officer in the military service of the United States, to wit, to Hugh L. Scott then and there Colonel in the Army of the United States and Superintendent of the United States Military Academy at West Point, New York, in the District and Circuit aforesaid, for approval by the said officer as such Superintendent aforesaid, he, the said Hugh L. Scott, as such Superintendent being then and there authorized to approve the same, a certain claim upon and against the Government of the United States, which said claim was upon an account purporting to be the account of him, the said Thomas Franklin, for provisions and cartage therefor, furnished by him to and for the Cadet Mess of the United States Military Academy aforesaid, and which said claim was in the words and figures following, to wit:

16 United States Military Academy.

The Cadet Mess

To Thos. Franklin, Dr.

1906.				
July 2nd.	To 10 Calves, 1323 lbs., at 12½¢	165 37		
"	" Lambs, 646 lbs., at 13¢	83 98	249	35
" 3rd.	" 40 bbls. Potatoes, at 2.75	110 00		
	" 10 crates Tomatoes, at 1.50	15 00		
	" Cartage	2 50	127	50
3rd.	" 10 crates Cantaloupes, at 2.50	25 00		
	" Cartage	50	25	50
3rd.	" 1974 lbs. Chicken-, at 18¢	355 32		
	" Cartage	1 95	357	27
12.	" 4 crates Lettuce, at 2.00	8 00		
	" 3 bbls. Cabbage, 1.50	4 50		
	" 30 crates Cantaloupes, at 2.50	75 00		
	" 10 crates Peaches, at 2.50	25 00		
	" Cartage	2 35	114	85
16.	" 20 bbls. Potatoes, at 2.75	55 00		
	" 1 crate Green Peppers	2 50		
	" 1 crate Parsley	3 00		
	" Cartage	1 10	61	60
			$936	07

17				
	Amount brought forward		936 07	936 07
July 21.	To 3 baskets Egg Plants, at 2.00.		6 00	
	4 bbls. Cabbage, 1.50.....		6 00	
	6 bask'ts Apples, 1.50.....		9 00	
	Cartage		65	21 65
July 21.	To 20 hind-quarters and ribs beef, 4091 lbs. at .11½.....		470 46	
July 23.	To 20 crates cantaloupes at 2.00..		40 00	
	Cartage		1 00	511 46
July 24.	To 20 lambs, 730 lbs., at .12½...		91 25	91 25
July 28.	To 20 sacks Potatoes, at 2.25.....		45 00	
	20 crates Canteloupes, at 2.00..		40 00	
	Cartage		2 00	87 00
July 31.	To 20 lambs, 639 lbs., at .12½...		79 87	79 87
Aug. 1.	To 4 b'sk'ts Green Peppers, at 1.25		5 00	
	18 crates Cantaloupes, at 2.00.		36 00	
	7 bskts. Okra, at 1.75.....		12 25	
	800 Green Corn, at 1.50.....		12 00	
	5 crates Squash, at .50.....		2 50	
	20 crates Onions, at 1.50.....		30 00	
	28 bbls. Potatoes, at 2.00.....		56 00	153 75
				$1881 05
18				
	Amount brought forward.....		1881 05	1881 05
Aug. 1.	To 10 crates Peaches, at 1.75.....		17 50	
	Cartage		4 80	22 30
				$1903 35

This account is correct and just.

(Signed) THOS. FRANKLIN.
Treasurer U. S. Military Academy,
Quartermaster and Commissary of Cadets.

The above statement of account against the Cadet Mess, U. S. Military Academy, is correct and just, and the receipt from the Treasurer of the U. S. Military Academy of One thousand nine hundred and three 35/100 Dollars, in payment in full is hereby acknowledged.

(Signed) THOS. FRANKLIN.

[Endorsed:] The Cadet Mess Voucher No. 2*a*. Thos. Franklin. Settlement ending ——— —, 19—. Check, No. ——— $1903 35/100. Currency, ———. Total, ———.

19 and which said claim at the time and place when and where it was so made and presented and caused to be made and presented, was false, fictitious and fraudulent in the following respects, to wit: he, the said Thomas Franklin then and there well

knowing the same to be false, fictitious and fraudulent in the following respects, to wit:

In that the items therein under date of July 3rd, 1906, "to 40 bbls. Potatoes at $2.75, $110.00, to 10 crates Tomatoes at $1.50, $15.00, to 1974 lbs. Chickens at 18¢ $355.32", should have been instead thereof respectively "to 20 bbls. Potatoes at $2.25, $45.00, to 10 crates Tomatoes at $1.10, $11.00, to 1958 lbs. Chickens at 14¢, $274.12," and in that the items therein under date of July 12th 1906, "to 4 crates Lettuce at $2.00, $8.00, to 3 bbls. Cabbage at $1.50, $4.50, to 30 crates Cantaloupes at $2.50, $75.00, to 10 crates Peaches at $2.50, $25.00" should have been instead thereof respectively "to 4 crates Lettuce at $1.00, $4.00, to 3 bbls. Cabbage at 75¢ $2.25, to 30 crates Cantaloupes at $2.00, $60.00 to 10 crates Peaches at $2.00, $20.00", and in that the items therein under date of July 16th, 1906, "to 20 bbls. Potatoes at $2.75, $55.00, to 1 crate Green Peppers, $2.50, to 1 Crate Parsley, $3.00" should have been instead thereof respectively "to 20 bbls. Potatoes at $2.25, $45.00, to 1 crate Green Peppers $1.75, to 1 crate parsley, $2.50", and in that the items therein under date of July 21st 1906 "to 3 baskets Egg Plants at $2.00, $6.00, to 4 bbls. Cabbage at $1.50, $6.00, to 6 bskts. Apples at $1.50, $9.00" should have been instead thereof respectively "to 3 baskets Egg Plants at $1.50, $4.50, to 4 bbls. Cabbage at 75¢ $3.00, to 6 bskts. Apples at $1.25, $7.50", and in that the item therein under date of July 23d, 1906, "to 20 crates Cantaloupes at $2.00 $40.00 should have been instead thereof "to 20 crates Cantaloupes at $1.75 $35.00" and in that the item therein under date of July 24th 1906 "to 20 lambs, 730 lbs. at 12½¢ $91.25" should have been instead thereof "to 20 lambs, 731 lbs. at 11¢, $80.41", and in that the items therein under date of July 28th 1906 "to 20 sacks Potatoes
20 at $2.25, $45.00, to 20 crates Cantaloupes at $2.00 $40.00, should have been instead thereof respectively "to 20 sacks Potatoes at $1.75, $35.00, to 20 crates Cantaloupes at $1.75, $35.00" and in that the item therein under date of July 31st, 1906 "to 20 lambs, 639 lbs. at 12½¢, $79.87" should have been instead thereof "to 20 lambs, 637 lbs. at 10¢, $66.89", and in that the items thereof under date of August 1st, 1906 "to 4 bskts. Green Peppers at $1.25, $5.00, to 18 crates Cantaloupes at $2.00, $36.00, to 7 bskts. Okra at $1.75, $12.25, to 800 Green Corn at $1.50, $12.00, to 5 crates Squash at 50¢ $2.50, to 20 crates Onions at $1.50, $30.00, to 28 bbls. Potatoes at $2.00, $56.00, to 10 crates Peaches at $1.75, $17.50", should have been instead thereof respectively "to 4 bskts. Green Peppers at 75¢ $3.00, to 18 crates Cantaloupes at $1.75, $31.50, to 7 bskts. Okra at $1.25, $8.75 to 800 Green Corn at $1.25, $10.00, to 5 crates Squash at 40¢ $2.00, to 20 crates Onions at 75¢, $15.00, to 28 bbls. Potatoes at $1.62½, $45.50, to 10 crates Peaches at $1.62½, $16.25", and in that each and every item therein for cartage on the articles therein set forth, to wit, "July 3d, 1906, Cartage $2.50, July 3d, 1906, Cartage 50¢, July 3d, 1906, Cartage $1.95, July 12th, 1906, Cartage, $2.35, July 16th, 1906, Cartage $1.10, July 21st, 1906, Cartage 65¢, July 23d, 1906, Cartage $1.00, July 28th, 1906, Cartage $2.00, August 1st, 1906, Cartage $4.80", was, as the said Thomas Franklin then and there well knew, utterly

and entirely false, fictitious, and fraudulent, in that the said Thomas Franklin neither had in truth nor in fact paid any sum whatever for cartage upon the articles covered by the said account, nor had he become or rendered himself liable for cartage on such articles in any way or manner whatsoever, and in that no sum whatsoever was then due him, the said Thomas Franklin, on account of cartage upon the said articles; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Sec. 5438 R. S.)

21 *Third Count.*

And the jurors aforesaid, on their oaths aforesaid, do further present, that Thomas Franklin, late of the City and County of New York, in the District and Circuit aforesaid, yeoman, heretofore, to wit, on the twenty-first day of September, in the year of our Lord one thousand nine hundred and six, at the Southern District of New York, and within the jurisdiction of this Court, unlawfully did make and present and cause to be made and presented to an officer in the military service of the United States, to wit, to Hugh L. Scott, then and there Colonel in the Army of the United States and Superintendent of the United States Military Academy at West Point, New York, in the District and Circuit aforesaid, for approval by the said officer as such Superintendent aforesaid, he, the said Hugh L. Scott, as such Superintendent being then and there authorized to approve the same, a certain claim upon and against the Government of the United States, which said claim was upon an account purporting to be the account of him, the said Thomas Franklin for provisions and cartage therefor, furnished by him to and for the Cadet Mess of the United States Military Academy aforesaid, and which said claim was in the words and figures following, to wit:

22 United States Military Academy.

The Cadet Mess

To Thos. Franklin, Dr.

1906.				
Aug. 4.	To 10 boxes Cal. Peaches, at 1.75	17 50		
	10 " " Pears 1.75	17 50		
	Cartage	1 00	36 00	
7.	20 Lambs, 690 lbs. at 12½¢	85 25	85 25	
1.	50 Trip R. R. Ticket used in trips to New York for the Cadet Mess	31 50	31 50	
5.	Hotel bill, bed and breakfast	3 00		
	Lunch, .50, Dinner 1.50, car fare .30 R. R. fare .63	2 93	5 93	
9.	R. R. fare, 1.26, car fare .40	1 66		
	Breakfast, lunch and dinner	2 00	3 66	
11.	R. R. fare, 1.26, car fare, .30, lunch, .50, dinner, 1.00	3 06	3 06	

13.	R. R. fare, 1.26, car fare, .25, lunch, 1.00	2 51	2 51
15.	R. R. Fare, 1.26, Car fare, .50, Hotel, 1.00, 4 meals, 3.75	6 51	6 51
16.	334 lbs. Fancy Chicken, at 16¢	53 44	53 44
20.	R. R. Fare, 1.26, Lunch, .75, Carfare .40	2 41	
26.	R. R. fare, 1.26, Lunch, .50, Dinner, 1.00, Carfare .50	3 26	
28.	R. R. fare, 1.26, Carfare .10	1 36	
30.	R. R. fare, 1.26, Carfare, .35, Lunch, .50, Dinner, 1.50	3 61	10 64
			$238 50

The above statement of account against the Cadet Mess, U. S. Military Academy, is correct and just, and the receipt from the Treasurer of the U. S. Military Academy of Two Hundred Thirty-Eight & 50/100 Dollars, in payment in full is hereby acknowledged.

(Signed) THOS. FRANKLIN.

[Endorsed:] The Cadet Mess. Voucher No. 2b. Capt. Thomas Franklin, West Point, N. Y. Settlement ending August 31st, 1906. Check, No. —: $—. Currency, 238.50. Total, 238.50.

23 and which said claim at the time and place when and where it was so made and presented and caused to be made and presented, was false, fictitious and fraudulent in the following respects, to wit: he, the said Thomas Franklin then and there well knowing the same to be false, fictitious and fraudulent in the following respects, to wit:

In that the items therein under date of August 4th, 1906, "to 10 boxes Cal. Peaches at $1.75, $17.50, to 10 boxes Cal. Pears, at $1.75, $17.50," should have been instead thereof respectively "to 10 boxes Cal. Peaches at $1.35, $13.50, to 10 boxes Cal. Pears at $1.35, $13.50", and in that the item therein under date of August 7th, 1906, "to 20 Lambs, 690 lbs., at 12-½¢, $85.25," should have been instead thereof "to 20 Lambs, 695 lbs. at 10-¼¢, $71.24", and in that the item therein under date of August 16th, 1906 "to 334 lbs. Fancy Chickens, at 16¢, $53.44," should have been instead thereof "to 334 lbs. Fancy Chicken, at 13-½¢, $45.09", and in that the item therein for cartage on the articles therein set forth, to wit: "August 4, 1906, Cartage $1.00", was, as the said Thomas Franklin then and there well knew, utterly and entirely false, fictitious, and fraudulent, in that the said Thomas Franklin neither had in truth nor in fact paid any sum whatever for cartage upon the articles covered by the said account, nor had he become or rendered himself liable for cartage on such articles in any way or manner whatsoever, and in that no sum whatsoever was then and there due him, the said Thomas Franklin, on account of cartage upon the said articles; against the peace of the United States and their dignity and con-

trary to the form of the statute of the United States in such case made and provided. (Sec. 5438 R. S.)

HENRY A. WISE,
U. S. Attorney.

24 [Endorsed:] U. S. Circuit Court. The United States of America, vs. Thomas Franklin. Indictment. Presenting false vouchers for approval. U. S. Rev. St. 5438. Henry A. Wise, U. S. Attorney. A true bill: Theodore H. Benedict, Foreman. U. S. Circuit Court, Southern District of N. Y. Filed June 15, 1909. John A. Shields, Clerk.

June 16. Deft. pleads not guilty. Bail $4,000.
" 23. Filed demurrer.
29. Demurrer argued.
July 1. Demurrer overruled (No opinion).
1. Filed Order overruling demurrer.
1. Pleads Not Guilty.
Nov. 4. Deft. withdraws plea of Not Guilty with leave to file Suppl. Demurrer.
Nov. 4. Filed Supplemental Demurrer.
8. Demurrer overruled Endorsement on brief. Defendant excepts.
Dec. 13. Ordered consolidated with indictments 2-149 & 2-168.
See Indictment 2-149 for further entries.

25 ***Demurrer.***

THE UNITED STATES OF AMERICA:

The Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, *ss:*

No. —.

THE UNITED STATES OF AMERICA
vs.
THOMAS FRANKLIN.

Demurrer to Indictment for Presenting False Vouchers, 5438 R. S. U. S.

The defendant by his counsel now comes, and by leave of the court files his demurrer to the indictment presented herein against him, copy of which is hereto attached, and to each and every count therein, and for cause of demurrer he shows:

That the facts stated in said indictment and in each and every count therein do not constitute a crime:

In that the said indictment in each and every count therein alleges that the said claim was against the Government of the United States, upon an account purporting to be for provisions and cartage there-

for furnished by the said defendant to and for the Cadet Mess of the United States Military Academy; whereas the voucher set forth in said indictment and each and every count therein is on its face and in fact an account and claim against the Cadet Mess, and not against the Government of the United States, the said Cadet Mess being no part of the said Government of the United States or of any department thereof, within the meaning of Section 5438, Revised Statutes.

Wherefore this defendant asks judgment of the court that he be dismissed and discharged from the said premises specified in the said indictment and in each and every count therein.

26 Dated at New York, the 23rd day of June, 1909.

S. T. ANSELL,
Attorney for Defendant.

U. S. Circuit Court, Southern District of N. Y. Filed Jun 23, 1909. John A. Shields, Clerk.

27 *Order Overruling Demurrer to Indictment.*

At a Stated Term of the United States Circuit Court, held in and for the Southern District of New York, at the United States Court House and Post Office Building in the Borough of Manhattan, City, County and State of New York, on the first day of July, in the year of our Lord one thousand nine hundred and nine.

Present, The Honorable Learned Hand, Circuit Judge.

Sec. 5438 R. S.

UNITED STATES OF AMERICA, Plaintiff,
vs.
THOMAS FRANKLIN, Defendant.

Whereas a demurrer to the indictment herein having been heretofore interposed by Thomas Franklin, the defendant above named, and the said demurrer having come on for argument on the 29th day of June, 1909, and after hearing S. T. Ansell, Esq., of counsel for the said defendant, Thomas Franklin, in support of the said demurrer, and Addison S. Pratt, Esq., Assistant United States Attorney, in opposition thereto, and due deliberation having been had.

Now on motion of Henry A. Wise, United States Attorney, it is

Ordered that the said demurrer to the said indictment be and hereby is overruled, and it is further

Ordered that the said defendant, Thomas Franklin, appear to plead to the said indictment at a term of the Circuit Court to be held on 1st, July, 1909, at 10:30 A. M.

LEARNED HAND,
U. S. Circuit Judge.

U. S. Circuit Court, Southern District of N. Y. Filed Jul- 1, 1909. John A. Shields, Clerk.

28 *Supplemental Demurrer.*

Circuit Court of the United States for the Southern District of New York.

THE UNITED STATES OF AMERICA
vs.
THOMAS FRANKLIN.

Supplemental Demurrer to Indictment (5438, R. S.).

And now comes, by leave of Court, the defendant above named, by his counsel, — for further cause of demurrer, says:

That the indictment filed against him on the 15th day of June, 1909, in each and every count thereof, and the matter therein contained in the manner and form as the same are stated and set forth are not sufficient in law, and that the said Thomas Franklin is not bound by the law of the land to answer the same, and this he is ready to verify.

Wherefore, for want of sufficient indictment in this behalf, the said Thomas Franklin prays judgment, and that by the court he may be dismissed and discharged from the said premises in the said indictment and each and every count thereof specified.

And for further cause of demurrer to said indictment the said Thomas Franklin shows to the court here the following, that is to say:

(1) That each of the separate counts in said indictment is insufficient in law, and the said defendant Thomas Franklin demurs to each and every of said counts separately and severally, for the reason that all of the allegations contained in each and every of the said counts are insufficient to charge the said defendant with any offence against the laws of the United States, and are not
29 sufficient to constitute a crime as against the said defendant Thomas Franklin.

(2) And the said defendant Thomas Franklin further demurs to each of the said counts for the reason that the said counts are, and each of them is, bad for duplicity, in that each of the said counts purports to charge the said defendant Thomas Franklin with several separate and distinct offences.

(3) That each of the separate counts in said indictment is further insufficient in law, and the said defendant Thomas Franklin demurs to each of said counts separately and severally, for the reason that said counts, contrary to the Sixth Amendment to the Constitution of the United States, do not, and neither of them does, apprise the defendant with reasonable certainty of the precise nature and cause of the accusation against him, and with a certainty sufficient to allow him to prepare his defense and to plead the judgment as a bar to any subsequent prosecution for the same offense.

(4) That each of the separate counts in said indictment is further insufficient in law, and the said defendant Thomas Franklin

demurs to each of said counts separately and severally, for the reason that the said counts, and each of them, contains on its face a fatal repugnancy in this: that the claim as set out in the said count is a claim against the Cadet Mess, whereas the claim alleged to have been made and presented for approval in the counts, all and several of the said indictment is alleged to be a claim upon and against the Government of the United States.

And this defendant prays that each of the said specifications hereinabove set forth may be taken as if separately made under the several respective demurrers to each of the several respective counts in the said indictment, and to the demurrer to the indict-
30 ment as a whole, the same as if repeated as many times as would be required to make each of said specifications apply to said indictment as a whole and separately to each of the separate counts thereof.

Dated, New York, November 4th, 1909.

By S. T. ANSELL,
Attorney for the Defendant.

U. S. Circuit Court, Southern District of N. Y. Filed Nov. 4, 1909. John A. Shields, Clerk.

31 *Indictment.*

Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

At a Stated Term of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, begun and held in the City of New York, within and for the District and Circuit aforesaid, on the third Wednesday of June, in the year of our Lord one thousand nine hundred and nine, and continued by adjournment to and including the sixteenth day of July, in the year of our Lord one thousand nine hundred and nine.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The Jurors of the United States of America within and for the District and Circuit aforesaid, on their oath present that Thomas Franklin, late of the City and County of New York, in the District and Circuit aforesaid, yeoman, heretofore, to wit, on the eighteenth day of July, in the year of our Lord one thousand nine hundred and six, at West Point, New York, in the District and Circuit aforesaid, unlawfully did make and present and cause to be made and presented to an officer in the military service of the United States, to wit, to Albert L. Mills, then and there Brigadier-General in the Army of the United States and Superintendent of the United States Military Academy at West Point, New York, in the District and Circuit aforesaid, for approval by the said officer as such Superintendent aforesaid, he, the said Albert L. Mills, as such Superintendent being then and there authorized to approve the same, a certain claim upon and against a department of the United States, that is to say, a

certain claim upon and against the Department of War of the said United States, which said claim was upon an account purporting to be the account of him, the said Thomas Franklin, for provisions and cartage therefor, furnished by him to and for the Cadet Mess of the United States Military Academy aforesaid, and which said claim was in the words and figures following, to wit:

32

United States Military Academy.

The Cadet Mess

To Thos. Franklin, Dr.

1906.					
May 26.	To 6 bbls. Apples, at 7.00		42 00		
	" 10 bxs. Onions, at 2.00		20 00		
	" 1 bag Carrots		1 75		
	" 1 bx. Parsley		1 50		
	" 1 " Green Peppers		4 00		
	" Cartage		95	70	20
28.	" 25 bxs. Chickens, 1120 lbs., at 18¢		201 60		
	" 23 bxs. Fowls, 1736 lbs., at 16¢		277 76		
	" Cartage		2 40	481	76
June 4.	" 5 bxs. Lemons, at 4.50		22 50		
	" 160 qts. Strawberries, at 12¢		19 20	41	70
6.	" 160 qts. Strawberries, at 14¢		22 40	22	40
8.	" 6 bbls. Apples, at $7		42 00		
	" 40 doz. Celery, at 80¢		32 00		
	" 160 qts. Strawberries, at 14¢		22 40		
	" Cartage		45	96	85
9.	" 200 bunches Radishes, 2¢		4 00		
	" 200 " Young Onions, 2¢		4 00		
	" Cartage		10	8	10
				$721	01

33

	Carried forward		721	00
June 11.	To 65 boxes Lemons at $5		325	00
" 14.	" 5 " Oranges, at 4.50	22 50		
	" Cartage	25	22	75
14.	" 754 lbs. Ducks, at 18¢	135 72		
	" 1144 " Chickens, at 18¢	205 92		
	" Cartage	55	342	19
19.	" 30 Crates Onions, at $2.00	60 00		
	" Cartage	1 50	61	50
21.	" 1065 lbs. Ducks, at 18¢	191 70		
	" Cartage	35	192	05
25.	" 20 bbls. Potatoes, at 3.25	65 00		
	" 1 crate Green Peppers	3 00		
	" 100 bunches Parsley	3 00		
	" 8 doz. Carrots, at 40¢	3 20		
	" 14 boxes Oranges, at 4.00	56 00		
	" 10 " Cantaloupes, at 2.00	20 00		

	" Cartage		2 35	152 55
26.	" 3 crates Egg Plant, at 2.50		7 50	
	" 200 bunches Radishes, 1½¢		3 00	
	" Cartage		20	10 70
				$1827 75

34

	Carried forward			$1827 75
June 27.	To 5 crates Cantaloupes, at 2.50		12 50	
	" Cartage		25	12 75
" 30.	" 15 crates Cantaloupes, at 2.50		37 50	
	" Cartage		75	38 25
" 30.	" 4481 lbs. Chicken-, at 18¢		803 58	
	" Cartage		4 50	811 08
				$2689 83

This account is correct and just.

(Sd.) THOS. FRANKLIN,
Captain, Commissary Treasurer, U. S. M. A.

The above statement of account against the Cadet Mess, U. S. Military Academy, is correct and just, and the receipt from the Treasurer of the U. S. Military Academy of Two thousand six hundred and eighty nine & 83/100 Dollars, in payment in full is hereby acknowledged.

(Signed) THOS. FRANKLIN.

[Endorsed:] The Cadet Mess. Voucher No. 6*b*. Thos. Franklin. Statement ending ——— —, 19—. Check, No. 49242. $2689 83/100. Currency, ———. Total ———.

35 and which said claim at the time and place when and where it was so made and presented and caused to be made and presented, was false, fictitious and fraudulent in the following respects, to wit; he, the said Thomas Franklin then and there well knowing the same to be false, fictitious and fraudulent in the following respects, to wit:

In that the items therein under date of May 26, 1906, "to 6 bbls. Apples at $7.00, $42.00; to 10 bxs. Onions at $2.00, $20.00; to 1 bag Carrots, $1.75; to 1 bx. Green Peppers, $4.00" should have been instead thereof respectively, "to 66 bbls. Apples at $5.50, $39.00; to 10 bxs. Onions at $1.60, $16.00; to 1 bag Carrots, $1.40; to 1 bx. Green Peppers, $3.00", and in that the items therein under date of May 28, 1906, "to 25 bxs. Chickens, 1120 lbs., at 18¢, $201.60; to 23 bxs. Fowls, 1736 lbs. at 16¢ $277.76", should have been instead thereof respectively, "to 25 bxs. Chickens, 1020 lbs., at 14¢, $142.80; to 23 bxs. Fowls, 1731 lbs. at 14¢, $242.34", and in that the item therein under date of June 4, 1906, "to 5 bxs. Lemons, at $4.50, $22.50," should have been instead thereof, "to 5 bxs. Lemons, at $4.25, $21.25", and in that the items therein under date of June 8, 1906, "to 6 bbls. Apples at $7.00, $42.00; to 40 doz. Celery at 80¢ $32.00," should have been instead thereof re-

spectively, "to 6 bbls. Apples at $6.00, $36.00; to 40 doz. Celery at 75¢, $30.00", and in that the items therein under date of June 9, 1906, "to 200 bunches Radishes, 2¢, $4.00; to 200 bunches Young Onions, 2¢, $4.00; should have been instead thereof respectively "to 200 bunches Radishes, 1¾¢ $3.50, to 200 bunches Young Onions, 1¼¢, $2.50", and in that the item therein under date of June 11, 1906 "to 65 boxes Lemons at $5.00, $325.00" should have been instead thereof "to 65 boxes Lemons at $4.75, $308.75", and in that the items therein under date of June 14, 1906, "to 5 boxes Oranges, $4.50, $22.50, to 754 lbs. Ducks at 18¢, $135.72, to 1144 lbs. Chickens at 18¢, $205.92", should have been instead
36 thereof respectively, "to 5 boxes Oranges, $4.00, $20.00, to 754 lbs. Ducks at 13¢, $98.02, to 1144 lbs. Chickens at 14¢, $160.16", and in that the item therein under date of June 19, 1906 "to 30 crates Onions at $2.00, $60.00", should have been instead thereof "to 30 crates Onions at $1.40, $42.00", and in that the item therein under date of June 21st, 1906," to 1065 lbs. Ducks, at 18¢, $191.70," should have been instead thereof "to 1065 lbs. Ducks at 13½¢, $143.78", and in that the items therein under date of June 25th, 1906, "to 1 crate Green Peppers, $3.00, to 100 bunches Parsley, $3.00, to 8 doz. Carrots at 40¢, $3.20, to 14 bxs. Oranges at $4.00, $56.00, to 10 bxs. Cantaloupes at $2.00, $20.00" should have been instead thereof respectively "to 1 Crate Green Peppers, $2.50, to 100 bunches Parsley, $2.50, to 8 doz. Carrots at 35¢, $2.80, to 14 bxs. Oranges at $3.75, $52.50, to 10 bxs. Cantaloupes at $1.50, $15.00", and in that the item therein under date of June 27th, 1906 "to 5 Crates Cantaloupes at $2.50, $12.50" should have been instead thereof "to 5 crates Cantaloupes at $2.25, $11.25", and in that the items therein under date of June 30th, 1906, "to 15 crates Cantaloupes at $2.50, $37.50, to 4481 lbs. Chicken, at 18¢, $806.58" should have been instead thereof respectively, "to 15 crates Cantaloupes at $2.00, $30.00, to 4470 lbs. Chicken at 14¢, $625.80", and in that each and every item therein for cartage, on the articles therein set forth, except the item "June 26, 1906, to cartage, 20¢", to wit, "May 26, 1906, Cartage, 95¢, May 28, 1906, Cartage, $2.40, June 8, 1906, Cartage, 45¢, June 9, 1906, Cartage, 10¢, June 14, 1906, Cartage, 25¢, June 14, 1906, Cartage, 55¢, June 19, 1906, Cartage, $1.50, June 21, 1906, Cartage, 35¢, June 25, 1906, Cartage, $2.35, June 27, 1906, Cartage, 25¢, June 30, 1906, Cartage, 75¢, and June 30, 1906, Cartage, $4.50," was, as the said Thomas Franklin then and there well knew utterly and entirely false, fictitious
and fraudulent in that the said Thomas Franklin neither
37 had in truth nor in fact paid any sum whatever for cartage upon the articles covered by the said account, nor had he become or rendered himself liable for cartage on such articles in any way or manner whatsoever, and in that no sum whatsoever was then due him, the said Thomas Franklin, on account of cartage upon the said articles; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Sec. 5438 R. S.)

Second Count.

And the jurors, aforesaid, on their oaths aforesaid, do further present, that Thomas Franklin, late of the City and County of New York, in the District and Circuit aforesaid, yeoman, heretofore, to wit, on the twenty-first day of September, in the year of our Lord one thousand nine hundred and six, at the Southern District of New York, and within the jurisdiction of this Court, unlawfully did make and present and cause to be made and presented to an officer in the military service of the United States, to wit, to Hugh L. Scott then and there Colonel in the Army of the United States and Superintendent of the United States Military Academy at West Point, New York, in the District and Circuit aforesaid, for approval by the said officer as such Superintendent, aforesaid, he, the said Hugh L. Scott, as such Superintendent being then and there authorized to approve the same, a certain claim upon and against a department of the United States, that is to say, a certain claim upon and against the Department of War of the said United States, which said claim was upon an account purporting to be the account of him, the said Thomas Franklin, for provisions and cartage therefor, furnished by him to and for the Cadet Mess of the United States Military Academy aforesaid, which said claim was in the words and figures following, to wit.

38 United States Military Academy.

The Cadet Mess

To Thos. Franklin, Dr.

1906.				
July 2nd.	To 10 Calves, 1323 lbs., at 12½¢.....	165 37		
"	" Lambs, 646 lbs., at 13¢.....	83 98	249	35
" 3rd.	" 40 bbls. Potatoes, at 2.75.....	110 00		
	" 10 crates Tomatoes, at 1.50.....	15 00		
	" Cartage	2 50	127	50
3rd.	" 10 crates Cantaloupes, at 2.50.....	25 00		
	" Cartage	50	25	50
3rd.	" 1974 lbs. Chicken, at 18¢.....	355 32		
	" Cartage	1 95	357	27
12.	" 4 crates Lettuce, at 2.00.....	8 00		
	" 3 bbls. Cabbage, 1.50.....	4 50		
	" 30 crates Cantaloupes, at 2.50....	75 00		
	" 10 crates Peaches, at 2.50.....	25 00		
	" Cartage	2 35	114	85
16.	" 20 bbls. Potatoes, at 2.75.....	55 00		
	" 1 crate Green Peppers.....	2 50		
	" 1 crate Parsley.....	3 00		
	" Cartage	1 10	61	60
			$936	07

39

	Amount brought forward	936 07	936 07
July 21.	To 3 baskets Egg Plants, at 2.00.	6 00	
	4 bbls. Cabbage, 1.50.....	6 00	
	6 baskts. Apples, 1.50.....	9 00	
	Cartage	65	21 65
July 21.	To 20 hind-quarters and ribs beef, 4091 lbs. at 11½.....	470 46	
July 23.	To 20 crates cantaloupes at 2.00..	40 00	
	Cartage	1 00	511 46
July 24.	To 20 lambs, 730 lbs., at .12½...	91 25	91 25
July 28.	To 20 sacks Potatoes, at 2.25.....	45 00	
	20 crates Cantaloupes, at 2.00..	40 00	
	Cartage	2 00	87 00
July 31.	To 20 lambs, 639 lbs., at .12½...	79 87	79 87
Aug. 1.	To 4 bskts. Green Peppers, at 1.25	5 00	
	7 bskts. Okra, at 1.75.....	12 25	
	18 crates Cantaloupes, at 2.00.	36 00	
	800 Green Corn, at 1.50.....	12 00	
	5 crates Squash, at .50.....	2 50	
	20 crates Onions, at 1.50.....	30 00	
	28 bbls. Potatoes, at 2.00.....	56 00	153 75
			$1881 05

40

	Amount brought forward.....	1881 05	1881 05
Aug. 1.	To 10 crates Peaches, at 1.75.....	17 50	
	Cartage	4 80	22 30
			$1903 35

This account is correct and just.

(Signed) THOS. FRANKLIN,
Treasurer U. S. Military Academy,
Quartermaster and Commissary of Cadets.

The above statement of account against the Cadet Mess, U. S. Military Academy, is correct and just, and the receipt from the Treasurer of the U. S. Military Academy of One thousand nine hundred and three 35/100 Dollars, in payment in full is hereby acknowledged.

(Signed) THOS. FRANKLIN.

[Endorsed:] The Cadet Mess Voucher No. 2*a*. Thos. Franklin. Settlement ending —— —, 19—. Check. No. —— $1903 35/100. Currency, ——. Total, ——.

41 and which said claim at the time and place when and where it was so made and presented and caused to be made and presented, was false, fictitious and fraudulent in the following respects, to wit: he, the said Thomas Franklin then and there well knowing

the same to be false, fictitious and fraudulent in the following respects, to wit:

In that the items therein under date of July 3rd, 1906, "to 40 bbls. Potatoes at $2.75, $110.00, to 10 crates Tomatoes at $1.50, $15.00, to 1974 lbs. Chickens at 18¢ $355.32," should have been instead thereof respectively "to 20 bbls. Potatoes at $2.25, $45.00, to 10 crates Tomatoes at $1.10, $11.00, to 1958 lbs. Chickens at 14¢, $274.12," and in that the items therein under date of July 12th 1906, "to 4 crates Lettuce at $2.00, $8.00, to 3 bbls. Cabbage at $1.50, $4.50, to 30 crates Cantaloupes at $2.50, $75.00, to 10 crates Peaches at $2.50, $25.00" should have been instead thereof respectively "to 4 crates Lettuce at $1.00, $4.00, to 3 bbls. Cabbage at 75¢ $2.25, to 30 crates Cantaloupes at $2.00, $60.00 to 10 crates Peaches at $2.00, $20.00," and in that the items therein under date of July 16th 1906, "to 20 bbls. Potatoes at $2.75, $55.00, to 1 crate Green Peppers, $2.50 to 1 Crate Parsley, $3.00" should have been instead thereof respectively "to 20 bbls. Potatoes at $2.25, $45.00, to 1 crate Green Peppers $1.75, to 1 crate Parsley, $2.50," and in that the items therein under date of July 21st 1906 "to 3 baskets Egg Plants at $2.00, $6.00, to 4 bbls. Cabbage at $1.50, $6.00, to 6 bskts. Apples at $1.50, $9.00" should have been instead thereof respectively "to 3 baskets Egg Plants at $1.50, $4.50, to 4 bbls. Cabbage at 75¢, $3.00, to 6 bskts. Apples at $1.25, $7.50," and in that the item therein under date of July 23rd, 1906, "to 20 crates Cantaloupes at $2.00 $40.00 should have been instead thereof "to 20 crates Cantaloupes at $1.75 $35.00" and in that the item therein under date of July 24th 1906 "to 20 lambs, 730 lbs. at 12½¢
42 $91.25" should have been instead thereof "to 20 lambs, 731 lbs. at 11¢, $80.41," and in that the items therein under date of July 28th 1906 "to 20 sacks Potatoes at $2.25, $45.00, to 20 crates Cantaloupes at $2.00 $40.00, should have been instead thereof respectively "to 20 sacks Potatoes at $1.75, $35.00, to 20 crates Cantaloupes at $1.75, $35.00" and in that the item therein under date of July 31st, 1906 "to 20 lambs, 639 lbs. at 12½¢, $79.87" should have been instead thereof "to 20 lambs, 637 lbs. at 10¢, $63.89," and in that the items thereof under date of August 1st, 1906 "to 4 bskts. Green Peppers at $1.25, $5.00 to 18 crates Cantaloupes at $2.00, $36.00, to 7 bskts. Okra at $1.75, $12.25, to 800 Green Corn at $1.50, $12.00, to 5 crates Squash at 50¢ $2.50, to 20 crates Onions at $1.50, $30.00, to 28 bbls. Potatoes at $2.00, $56.00, to 10 crates Peaches at $1.75, $17.50," should have been instead thereof respectively "to 4 bskts. Green Peppers at 75¢ $3.00, to 18 crates Cantaloupes at $1.75, $31.50, to 7 bskts. Okra at $1.25, $8.75 to 800 Green Corn at $1.25, $10.00, to 5 crates Squash at 40¢ $2.00, to 20 crates Onions at 75c, $15.00, to 28 bbls. Potatoes at $1.62½, $45.50, to 10 crates Peaches at $1.62½, $16.25," and in that each and every item therein for cartage on the articles therein set forth, to wit "July 3d, 1906, Cartage $2.50, July 3d, 1906, Cartage 50¢ July 3d, 1906, Cartage $1.95, July 12th, 1906, Cartage $2.35, July 16th, 1906, Cartage $1.10, July 21st, 1906, Cartage 65¢, July 23d, 1906, Cartage $1.00, July 28th, 1906, Cartage $2.00, August 1st, 1906, Cartage $4.80," was, as the said Thomas Franklin then and there

well knew, utterly and entirely false, fictitious, and fraudulent, in that the said Thomas Franklin neither had in truth nor in fact paid any sum whatever for cartage upon the articles covered by the said account, nor had he become or rendered himself liable for cartage on such articles in any way or manner whatsoever, and in that no sum whatsoever was then due him, the said Thomas Franklin, on account of cartage upon the said articles; against the
43 peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Sec. 5438 R. S.)

Third Count.

And the Jurors aforesaid, on their oaths aforesaid, do further present, that Thomas Franklin, late of the City and County of New York, in the District and Circuit aforesaid, yeoman, heretofore, to wit, on the twenty-first day of September in the year of our Lord one thousand nine hundred and six, at the Southern District of New York, and within the jurisdiction of this Court, unlawfully did make and present and cause to be made and presented to an officer in the military service of the United States, to wit, to Hugh L. Scott, then and there Colonel in the Army of the United States and Superintendent of the United States Military Academy at West Point, New York, in the District and Circuit aforesaid, for approval by the said officer as such Superintendent aforesaid, he, the said Hugh L. Scott, as such Superintendent being then and there authorized to approve the same, a certain claim upon and against a department of the United States, that is to say, a certain claim upon and against the Department of War of the said United States, which said claim was upon an account purporting to be the account of him, the said Thomas Franklin for provisions and cartage therefor, furnished by him to and for the Cadet Mess of the United States Military Academy aforesaid, and which said claim was in the words and figures following, to wit:

44 United States Military Academy.

The Cadet Mess

To Thos. Franklin, Dr.

1906.				
Aug. 4.	To 10 boxes Cal. Peaches, at 1.75.....	17 50		
	10 " " Pears 1.75.....	17 50		
	Cartage	1 00	36 00	
7.	20 Lambs, 690 lbs. at 12½¢.....	85 25	85 25	
1.	50 Trip R. R. Ticket used in trips to New York for the Cadet Mess....	31 50	31 50	
5.	Hotel bill, bed and breakfast.....	3 00		
	Lunch, .50, Dinner 1.50, car fare .30 R. R. fare .63.....	2 93	5 93	
9.	R. R. fare, 1.26, car fare .40.....	1 66		
	Breakfast, lunch and dinner.....	2 00	3 66	

11.	R. R. fare, 1.26, car fare, .30, lunch, .50, dinner, 1.00.....	3 06	3 06
13.	R. R. fare, 1.26, car fare, .25, lunch, 1.00	2 51	2 51
15.	R. R. Fare, 1.26, Car fare, .50, Hotel, 1.00, 4 meals, 3.75.....	6 51	6 51
16.	334 lbs. Fancy Chickens, at 16¢.....	53 44	53 44
20.	R. R. Fare, 1.26, Lunch, .75, Car-fare .40	2 41	
26.	R. R. fare, 1.26, Lunch, .50, Dinner, 1.00, Carfare .50.....	3 26	
28.	R. R. fare, 1.26, Carfare .10.....	1 36	
30.	R. R. fare, 1.26, Carfare, .35, Lunch, .50, Dinner, 1.50.....	3 61	10 64
			$238 50

The above statement of account against the Cadet Mess, U. S. Military Academy, is correct and just, and the receipt from the Treasurer of the U. S. Military Academy of Two Hundred Thirty-Eight & 50/100 Dollars, in payment in full is hereby acknowledged.

(Signed) THOS. FRANKLIN.

[Endorsed:] The Cadet Mess. Voucher No. 2*b*. Capt. Thomas Franklin, West Point, N. Y. Settlement ending August 31st, 1906. Check, No. —; $—. Currency, 238.50. Total, 238.50

45 and which said claim at the time and place when and where it was so made and presented and caused to be made and presented, was false, fictitious and fraudulent in the following respects, to wit: he, the said Thomas Franklin then and there well knowing the same to be false, fictitious and fraudulent in the following respects, to wit:

In that the items therein under date of August 4th, 1906, "to 10 boxes Cal. Peaches at $1.75, $17.50, to 10 boxes Cal. Pears, at $1.75, $17.50," should have been instead thereof respectively "to 10 boxes Cal. Peaches at $1.35, $13.50, to 10 boxes Cal. Pears at $1.35, $13.50," and in that the item therein under date of August 7th, 1906, "to 20 Lambs, 690 lbs., at 12½¢, $85.25," should have been instead thereof "to 20 Lambs, 695 lbs. at 10¼¢, $71.24," and in that the item therein under date of August 16th, 1906, "to 334 lbs. Fancy Chicken-, at 16¢, $53.44," should have been instead thereof "to 334 lbs. Fancy Chicken-, at 13½¢, $45.09," and in that the item therein for cartage on the articles therein set forth, to wit: "August 4, 1906, Cartage $1.00," was, as the said Thomas Franklin then and there well knew, utterly and entirely false, fictitious, and fraudulent, in that the said Thomas Franklin neither had in truth nor in fact paid any sum whatever for cartage upon the articles covered by the said account, nor had he become or rendered himself liable for cartage on such articles in any way or manner whatsoever, and in that no sum whatsoever was then and there due him, the said

Thomas Franklin, on account of cartage upon the said articles; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Sec. 5438 R. S.)

46 *Fourth Count.*

And the jurors aforesaid, on their oaths aforesaid, do further present, that Thomas Franklin, late of the City and County of New York, in the District and Circuit aforesaid, yeoman, heretofore, to wit, on the eighteenth day of July, in the year of our Lord one thousand nine hundred and six, at West Point, New York, in the District and Circuit aforesaid, unlawfully did make and present and cause to be made and presented to an officer in the military service of the United States, to wit, to Albert L. Mills, then and there Brigadier-General in the Army of the United States and Superintendent of the United States Military Academy at West Point, New York, in the District and Circuit aforesaid, for approval by the said officer as such Superintendent aforesaid, he, the said Albert L. Mills as such Superintendent being then and there authorized to approve the same, a certain claim upon and against an officer of the United States, that is to say, a certain claim upon and against the said Thomas Franklin, who was then and there a Captain in the military service of the United States, detailed for duty at the United States Military Academy at West Point, New York, in the District and Circuit aforesaid, and who had been duly detailed as Treasurer of the said United States Military Academy and was then and there acting as such Treasurer, and who was the officer charged with all matters relating to the pay and accounts of the cadets at the said United States Military Academy and with the duty of paying for the provisions purchased for the use of the Cadet Mess at the said United States Military Academy, which said claim was upon an account purporting to be the account of him, the said Thomas Franklin, for provisions and cartage therefor, furnished by him to and for the Cadet Mess of the United States Military Academy aforesaid, and which said claim was in the words and figures following, to wit:

47 United States Military Academy.

The Cadet Mess

To Thos. Franklin, Dr.

1906.				
May 26.	To 6 bbls. Apples, at 7.00	42	00	
	" 10 bxs. Onions, at 2.00	20	00	
	" 1 bag Carrots	1	75	
	" 1 bx. Parsley	1	50	
	" 1 " Green Peppers	4	00	
	" Cartage		95	70 20

	28.	" 25 bxs. Chickens, 1120 lbs., at 18¢	201	60	
		" 23 bxs. Fowls, 1736 lbs., at 16¢	277	76	
		" Cartage	2	40	481 76
June	4.	" 5 bxs. Lemons, at 4.50	22	50	
		" 160 qts. Strawberries, at 12¢	19	20	41 70
	6.	" 160 qts. Strawberries, at 14¢	22	40	22 40
	8.	" 6 bbls. Apples, at $7	42	00	
		" 40 doz. Celery, at 80¢	32	00	
		" 160 qts. Strawberries, at 14¢	22	40	
		" Cartage		45	93 85
	9.	" 200 bunches Radishes, 2¢	4	00	
		" 200 " Young Onions, 2¢	4	00	
		" Cartage		10	8 10
					$721 01

48

		Carried forward			$721 01
June	11.	To 65 boxes Lemons, at $5			325 00
"	14.	" 5 " Oranges, at 4.50	22	50	
		" Cartage		25	22 75
	14.	" 754 lbs. Ducks, at 18¢	135	72	
		" 1144 " Chickens, at 18¢	205	92	
		" Cartage		55	342 19
	19.	" 30 Crates Onions, at $2.00	60	00	
		" Cartage	1	50	61 50
	21.	" 1035 lbs. Ducks, at 18¢	191	70	
		" Cartage		35	192 05
	25.	" 20 bbls. Potatoes, at 3.25	65	00	
		" 1 crate Green Peppers	3	00	
		" 100 bunches Parsley	3	00	
		" 8 doz. Carrots, at 40¢	3	20	
		" 14 boxes Oranges, at 4.00	56	00	
		" 10 " Cantaloupes, at 2.00	20	00	
		" Cartage	2	35	152 55
	26.	" 3 crates Egg Plant, at 2.50	7	50	
		" 200 bunches Radishes, 1½¢	3	00	
		" Cartage		20	10 70
					$1827 75.

49

		Carried forward			1827 75
June	27.	To 5 crates Cantaloupes, at 2.50	12	50	
		" Cartage		25	12 75
"	30.	" 15 crates Cantaloupes, at 2.50	37	50	
		" Cartage		75	38 25
"	30.	" 4481 lbs. Chicken-, at 18¢	806	58	
		" Cartage	4	50	811 08
					$2689 83

This account is correct and just.

(Sd.) THOS. FRANKLIN,

Captain, Commissary Treasurer, U. S. M. A.

The above statement of account against the Cadet Mess, U. S. Military Academy, is correct and just, and the receipt from the Treasurer of the U. S. Military Academy of Two thousand six hundred and eighty nine & 83/100 Dollars, in payment in full is hereby acknowledged.

(Signed) THOS. FRANKLIN.

[Endorsed:] The Cadet Mess. Voucher No. 6*b*. Thos. Franklin. Statement ending ——— —, 19—. Check, No. 49242. $2689 83/100. Currency, ———. Total ———.

50 and which said claim at the time and place when and where it was so made and presented and caused to be made and presented, was false, fictitious and fraudulent in the following respects, to wit; he, the said Thomas Franklin then and there well knowing the same to be false, fictitious and fraudulent in the following respects, to wit:

In that the items therein under date of May 26, 1906, "to 6 bbls. Apples at $7.00, $42.00; to 10 bxs. Onions at $2.00, $20.00; to 1 bag Carrots, $1.75; to 1 bx. Green peppers, $4.00" should have been instead thereof respectively, "to 6 bbls. Apples at $6.50, $39.00; to 10 bxs. Onions at $1.60, $16.00; to 1 bag Carrots $1.40; to 1 bx. Green Peppers, $3.00", and in that the items therein under date of May 28, 1906, "to 25 bxs. Chickens, 1120 lbs., at 18¢, $201.60; to 23 bxs. Fowls, 1736 lbs. at 16¢ $277.76", should have been instead thereof respectively, "to 25 bxs. Chickens, 1020 lbs., at 14¢, $142.80; to 23 bxs. Fowls, 1731 lbs. at 14¢, $242.34", and in that the item therein under date of June 4, 1906, "to 5 bxs. Lemons, at $4.50, $22.50," should have been instead thereof, "to 5 bxs. Lemons at $4.25, $21.25", and in that the items therein under date of June 8, 1906, "to 6 bbls. Apples at $7.00, $42.00; to 40 doz. Celery at 80¢, $32.00," should have been instead thereof respectively, "to 6 bbls. Apples at $6.00, $36.00; to 40 doz. Celery at 75¢, $30.00", and in that the items therein under date of June 9, 1906, "to 200 bunches Radishes, 2¢, $4.00; to 200 bunches Young Onions, 2¢, $4.00", should have been instead thereof respectively "to 200 bunches Radishes, 1¾¢, $3.50, to 200 bunches Young Onions, 1¼¢, $2.50", and in that the item therein under date of June 11, 1906 "to 65 boxes Lemons at $5.00, $325.00" should have been instead thereof "to 65 boxes Lemons at $4.75, $308.75", and in that the items therein under date of June 14, 1906, "to 5 boxes Oranges, $4.50, $22.50, to 754 lbs. Ducks at 18¢, $135.72, to 1144 lbs. Chickens at 18¢, $205.92", should have been instead thereof respectively, "to 5 boxes Oranges, $4.00, $20.00, to 754 lbs. Ducks at 13¢, $98.02, to 1144 lbs. Chickens at 14¢, $160.16", and in that the item

51 therein under date of June 19, 1906 "to 30 crates Onions at $2.00, $60.00", should have been instead thereof "to 30 crates Onions at $1.40, $42.00", and in that the item therein under date of June 21st, 1906, "to 1065 lbs. Ducks, at 18¢, $191.70," should have been instead thereof "to 1065 lbs. Ducks at 13½¢, $143.78", and in that the items therein under date of June 25th,

1906, "to 1 crate Green Peppers, $3.00, to 100 bunches Parsley, $3.00, to 8 doz. Carrots at 40¢, $3.20, to 14 bxs. Oranges at $4.00, $56.00, to 10 bxs. Cantaloupes at $2.00, $20.00" should have been instead thereof respectively "to 1 crate Green Peppers, $2.50, to 100 bunches Parsley, $2.50, to 8 doz. Carrots at 35¢, $2.80, to 14 bxs. Oranges at $3.75, $52.50, to 10 bxs. Cantaloupes at $1.50, $15.00", and in that the item therein under date of June 27th, 1906 "to 5 crates Cantaloupes at $2.50, $12.50" should have been instead thereof "to 5 crates Cantaloupes at $2.25, $11.25", and in that the items therein under date of June 30th, 1906, "to 15 crates Cantaloupes at $2.50, $37.50, to 4481 lbs. Chicken-, at 18¢, $806.58" should have been instead thereof respectively, "to 15 crates Cantaloupes at $2.00, $30.00, to 4470 lbs. Chicken- at 14¢, $625.80", and in that each and every item therein for cartage, on the articles therein set forth, except the item "June 26, 1906, to cartage, 20¢", to wit, "May 26, 1906, Cartage, 95¢, May 28, 1906, Cartage, $2.40, June 8, 1906, Cartage, 45¢, June 9, 1906, Cartage, 10¢, June 14, 1906, Cartage, 25¢, June 14, 1906, Cartage, 55¢, June 19, 1906, Cartage, $1.50, June 21, 1906, Cartage, 35¢, June 25, 1906, Cartage $2.35, June 27, 1906, Cartage, 25¢, June 30, 1906, Cartage, 75¢, and June 30, 1906, Cartage, $4.50," was, as the said Thomas Franklin then and there well knew, utterly and entirely false, fictitious, and fraudulent, in that the said Thomas Franklin neither had in truth nor in fact paid any sum whatever for cartage upon the articles covered by the said account, nor had he become or rendered himself liable for cartage on such articles in any way or manner whatsoever, and in that no sum whatsoever was then due him, the said Thomas Franklin, on account of cartage upon the said
52 articles; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Sec. 5438 R. S.)

Fifth Count.

And the jurors aforesaid, on their oaths aforesaid, do further present, that Thomas Franklin, late of the City and County of New York, in the District and Circuit aforesaid, yeoman, heretofore, to wit, on the twenty-first day of September, in the year of our Lord one thousand nine hundred and six, at the Southern District of New York, and within the jurisdiction of this Court, unlawfully did make and present and cause to be made and presented to an officer in the military service of the United States, to wit, to Hugh L. Scott then and there Colonel in the Army of the United States and Superintendent of the United States Military Academy at West Point, New York, in the District and Circuit aforesaid, for approval by the said officer as such Superintendent aforesaid, he, the said Hugh L. Scott, as such Superintendent being then and there authorized to approve the same, a certain claim upon and against an officer of the United States, that is to say, a certain claim upon and against the said Thomas Franklin, who was then and there a Captain in the military service of the United States, detailed for duty

at the United States Military Academy at West Point, New York, in the District and Circuit aforesaid, and who had been duly detailed as Treasurer of the said United States Military Academy and was then and there acting as such Treasurer, and who was the officer charged with all matters relating to the pay and accounts of the cadets at the said United States Military Academy and with the duty of paying for the provisions purchased for the use of the Cadet Mess at the said United States Military Academy, which said claim was upon an account purporting to be the account of him, the said Thomas Franklin, for provisions and cartage therefor, furnished by him to and for the Cadet Mess of the United States Military Academy aforesaid, and which said claim was in the words and figures following, to wit:

53 United States Military Academy.

The Cadet Mess

To Thos. Franklin, Dr.

1906.			
July 2nd.	To 10 Calves, 1323 lbs., at 12½¢.....	$165 37	
"	" Lambs, 646 lbs. at 13¢.....	83 98	249 35
" 3rd.	" 40 bbls. Potatoes, at 2.75.....	110 00	
	" 10 crates Tomatoes, at 1.50.....	15 00	
	" Cartage	2 50	127 50
3rd.	" 10 crates Cantaloupes, at 2.50.....	25 00	
	" Cartage	50	25 50
3rd.	" 1974 lbs. Chicken-, at 18¢.....	355 32	
	" Cartage	1 95	357 27
12.	" 4 crates Lettuce, at 2.00.....	8 00	
	" 3 bbls. Cabbage, 1.50.....	4 50	
	" 30 crates Cantaloupes, at 2.50....	75 00	
	" 10 crates Peaches, at 2.50.....	25 00	
	" Cartage	2 35	114 85
16.	" 20 bbls. Potatoes, at 2.75.....	55 00	
	" 1 crate Green Peppers.....	2 50	
	" 1 crate Parsley.....	3 00	
	" Cartage	1 10	61 60
			$936 07

54

	Amount brought forward	936 07	936 07
July 21.	To 3 baskets Egg Plants, at 2.00.	6 00	
	4 bbls. Cabbage, 1.50.....	6 00	
	6 bask'ts Apples, 1.50.....	9 00	
	Cartage	65	21 65
July 21.	To 20 hind-quarters and ribs beef, 4091 lbs. at .11½.....	470 46	
July 23.	To 20 crates cantaloupes at 2.00..	40 00	
	Cartage	1 00	511 46
July 24.	To 20 lambs, 730 lbs., at .12½...	91 25	91 25

July 28.	To 20 sacks Potatoes, at 2.25.....	45 00	
	20 crates Canteloupes, at 2.00..	40 00	
	Cartage	2 00	87 00
July 31.	To 20 lambs, 639 lbs., at .12½...	79 87	79 87
Aug. 1.	To 4 b'skt's Green Peppers, at 1.25	5 00	
	18 crates Cantaloupes, at 2.00.	36 00	
	7 b'sk'ts Okra, at 1.75.....	12 25	
	800 Green Corn, at 1.50.....	12 00	
	5 crates Squash, at .50.....	2 50	
	20 crates Onions, at 1.50.....	30 00	
	28 bbls. Potatoes, at 2.00.....	56 00	153 75
			$1881 05
55			
	Amount brought forward.....	1881 05	1881 05
Aug. 1.	To 10 crates Peaches, at 1.75.....	17 50	
	Cartage	4 80	22 30
			$1903 35

This account is correct and just.

(Signed) THOS. FRANKLIN,
Treasurer U. S. Military Academy,
Quartermaster and Commissary of Cadets.

The above statement of account against the Cadet Mess, U. S. Military Academy, is correct and just, and the receipt from the Treasurer of the U. S. Military Academy of One thousand nine hundred and three 35/100 Dollars, in payment in full is hereby acknowledged.

(Signed) THOS. FRANKLIN.

[Endorsed:] The Cadet Mess Voucher No. 2*a*. Thos. Franklin. Settlement ending —— —, 19—. Check, No. —— $1903 35/100. Currency, ——. Total, ——.

56 and which said claim at the time and place when and where it was so made and presented and caused to be made and presented, was false, fictitious and fraudulent in the following respects, to wit; he, the said Thomas Franklin then and there well knowing the same to be false, fictitious and fraudulent in the following respects, to wit:

In that the items therein under date of July 3rd, 1906, "to 40 bbls. Potatoes at $2.75, $110.00, to 10 crates Tomatoes at $1.50, $15.00, to 1974 lbs. Chickens at 18¢ $355.32", should have been instead thereof respectively "to 20 bbls. Potatoes at $2.25, $45.00, to 10 crates Tomatoes at $1.10, $11.00, to 1958 lbs. Chickens at 14¢ $274.12," and in that the items therein under date of July 12th 1906, "to 4 crates Lettuce at $2.00, $8.00, to 3 bbls. Cabbage at $1.50 $4.50, to 30 crates Cantaloupes at $2.50, $75.00, to 10 crates Peaches at $2.50, $25.00" should have been instead thereof respectively "to 4 crates Lettuce at $1.00, $4.00, to 3 bbls. Cabbage at 75¢ $2.25, to

30 crates Cantaloupes at $2.00, $60.00 to 10 crates Peaches at $2.00, $20.00", and in that the items therein under date of July 16th, 1906, "to 20 bbls. Potatoes at $2.75, $55.00, to 1 crate Green Peppers, $2.50, to 1 Crate Parsley, $3.00" should have been instead thereof respectively "to 20 bbls. Potatoes at $2.25, $45.00, to 1 crate Green Peppers $1.75, to 1 crate Parsley, $2.50", and in that the items therein under date of July 21st 1906 "to 3 baskets Egg Plants at $2.00, $6.00, to 4 bbls. Cabbage at $1.50, $6.00, to 6 bskts. Apples at $1.50, $9.00" should have been instead thereof respectively "to 3 baskets Egg Plants at $1.50, $4.50, to 4 bbls. Cabbage at 75¢ $3.00, to 6 bskts. Apples at $1.25, $7.50", and in that the item therein under date of July 23d, 1906, "to 20 crates Cantaloupes at $2.00 $40.00 should have been instead thereof "to 20 crates Cantaloupes at $1.75 $35.00 ' and in that the item therein under date of July 24th 1906 "to 20 lambs, 730 lbs. at 12½¢ $91.25" should have been instead thereof "to 20 lambs, 731 lbs. at 11¢, $80.41", and in that the items therein under date of July 28th 1906 "to 20 sacks
57 Potatoes at $2.25, $45.00, to 20 crates Cantaloupes at $2.00 $40.00, should have been instead thereof respectively "to 20 sacks Potatoes at $1.75, $35.00, to 20 crates Cantaloupes at $1.75, $35.00" and in that the item therein under date of July 31st, 1906 "to 20 lambs, 639 lbs. at 12½¢, $79.87" should have been instead thereof "to 20 lambs, 637 lbs. at 10¢, $66.89", and in that the items thereof under date of August 1st, 1906 "to 4 bskts. Green Peppers at $1.25, $5.00, to 18 crates Cantaloupes at $2.00, $36.00, to 7 bskts. Okra at $1.70, $12.25, to 800 Green Corn at $1.50, $12.00, to 5 crates Squash at 50¢ $2.50, to 20 crates Onions at $1.50, $30.00, to 28 bbls. Potatoes at $2.00, $56.00, to 10 crates Peaches at $1.75, $17.50", should have been instead thereof respectively "to 4 bskts. Green Peppers at 75¢ $3.00, to 18 crates Cantaloupes at $1.75, $31.50, to 7 bskts. Okra at $1.25, to $8.75 to 800 Green Corn at $1.25, $10.00, to 5 crates Squash at 40¢ $2.00, to 20 crates Onions at 75c, $15.00, to 28 bbls. Potatoes at $1.62½, $45.50, to 10 crates Peaches at $1.62½, $16.25", and in that each and every item therein for cartage on the articles therein set forth, to wit "July 3d, 1906, Cartage $2.50 July 3d, 1906, Cartage, 50¢, July 3d, 1906, Cartage $1.95, July 12th, 1906, Cartage, $2.35, July 16th, 1906, Cartage $1.10, July 21st, 1906, Cartage 65¢, July 23d, 1906, Cartage $1.00, July 28th, 1906, Cartage $2.00, August 1st, 1906, Cartage $4.80", was, as the said Thomas Franklin then and there well knew, utterly and entirely false, fictitious, and fraudulent, in that the said Thomas Franklin neither had in truth nor in fact paid any sum whatever for cartage upon the articles covered by the said account, nor had he become or rendered himself liable for cartage on such articles in any way or manner whatsoever, and in that no sum whatsoever was then due him, the said Thomas Franklin, on account of cartage upon the said articles; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Sec. 5438 R. S.)

58 *Sixth Count.*

And the jurors aforesaid, on their oaths aforesaid, do further present that Thomas Franklin, late of the City and County of New York, in the District and Circuit aforesaid, yeoman, heretofore, to wit, on the twenty-first day of September, in the year of our Lord one thousand nine hundred and six, at the Southern District of New York, and within the jurisdiction of this Court, unlawfully did make and present and cause to be made and presented to an officer in the military service of the United States, to wit, to Hugh L. Scott, then and there Colonel in the Army of the United States and Superintendent of the United States Military Academy at West Point, New York, in the District and Circuit aforesaid, for approval by the said officer as such Superintendent aforesaid, he, the said Hugh L. Scott, as such Superintendent being then and there authorized to approve the same, a certain claim upon and against an officer of the United States, that is to say, a certain claim upon and against the said Thomas Franklin, who was then and there a Captain in the military service of the United States, detailed for duty at the United States Military Academy at West Point, New York, in the District and Circuit aforesaid, and who had been duly detailed as Treasurer of the said United States Military Academy and was then and there acting as such Treasurer, and who was the officer charged with all matters relating to the pay and accounts of the cadets at the said United States Military Academy and with the duty of paying for the provisions purchased for the use of the Cadet Mess at the said United States Military Academy, which said claim was upon an account purporting to be the account of him, the said Thomas Franklin for provisions and cartage therefor, furnished by him to and for the Cadet Mess of the United States Military Academy aforesaid, and which said claim was in the words and figures following, to wit:

59 United States Military Academy.

The Cadet Mess

To Thos. Franklin, Dr.

1906.				
Aug. 4.	To 10 boxes Cal. Peaches, at 1.75.....	17 50		
	10 " " Pears 1.75.....	17 50		
	Cartage	1 00	36 00	
7.	20 Lambs, 690 lbs. at 12½¢.....	85 25	85 25	
1.	50 Trip R. R. Ticket used in trips to New York for the Cadet Mess....	31 50	31 50	
5.	Hotel bill, bed and breakfast.....	3 00		
	Lunch, .50, Dinner 1.50, car fare .30 R. R. fare .63.....	2 93	5 93	
9.	R. R. fare, 1.26, car fare .40.....	1 66		
	Breakfast, lunch and dinner.....	2 00	3 66	
11.	R. R. fare, 1.26, car fare, .30, lunch, .50, dinner, 1.00.....	3 06	3 06	

13.	R. R. fare, 1.26, car fare, .25, lunch, 1.00	2 51	2 51
15.	R. R. Fare, 1.26, Car fare, .50, Hotel, 1.00, 4 meals, 3.75	6 51	6 51
16.	334 lbs. Fancy Chickens, at 16¢	53 44	53 44
20.	R. R. Fare, 1.26, Lunch, .75, Carfare .40	2 41	
26.	R. R. fare, 1.26, Lunch, .50, Dinner, 1.00, Carfare .50	3 26	
28.	R. R. fare, 1.26, Carfare .10	1 36	
30.	R. R. fare, 1.26, Carfare, .35, Lunch, .50, Dinner, 1.50	3 61	10 64
			$238 50

The above statement of account against the Cadet Mess, U. S. Military Academy, is correct and just, and the receipt from the Treasurer of the U. S. Military Academy of Two Hundred Thirty-Eight & 50/100 Dollars, in payment in full is hereby acknowledged.

(Signed) THOS. FRANKLIN.

[Endorsed:] The Cadet Mess. Voucher No. 26. Capt. Thomas Franklin, West Point, N. Y. Settlement ending August 31st, 1906. Check, No. —: $—. Currency, 238.50. Total, 238.50.

60 and which said claim at the time and place when and where it was so made and presented and caused to be made and presented, was false, fictitious and fraudulent in the following respects, to wit: he the said Thomas Franklin then and there well knowing the same to be false, fictitious and fraudulent in the following respects, to wit:

In that the items therein under date of August 4th, 1906, "to 10 boxes Cal. Peaches at $1.75, $17.50, to 10 boxes Cal. Pears, at $1.75 $17.50," should have been instead thereof respectively "to 10 boxes Cal. Peaches at $1.35, $13.50, to 10 Cal. Pears at $1.35, $13.50", and in that the item therein under date of August 7th, 1906, "to 20 lambs, 690 lbs., at 12-½¢, $85.25," should have been instead thereof "to 20 Lambs, 695 lbs. at 10-½¢, $71.24", and in that the item therein under date of August 16th, 1906 "to 334 lbs. Fancy Chicken, at 16¢ $53.44," should have been instead thereof "to 334 lbs. Fancy Chicken, at 13-½¢, $45.09", and in that the item therein for cartage on the articles therein set forth, to wit: "August 4, 1906, Cartage $1.00", was, as the said Thomas Franklin then and there well knew, utterly and entirely false, fictitious, and fraudulent, in that the said Thomas Franklin neither had in truth nor in fact paid any sum whatever for cartage upon the articles covered by the said account, nor had he become or rendered himself liable for cartage on such articles in any way or manner whatsoever, and in that no sum whatsoever was then and there due him, the said Thomas Franklin, on account of cartage upon the said articles; against the peace of the United States and their dignity and contrary to the form of the

statute of the United States in such case made and provided. (Sec. 5438 R. S.)

61 *Seventh Count.*

And the jurors aforesaid, on their oaths aforesaid, do further present that Thomas Franklin, late of the City and County of New York, in the District and Circuit aforesaid, yeoman, heretofore, to wit, on the fourth day of August, in the year of our Lord one thousand nine hundred and six, at West Point, New York, in the District and Circuit aforesaid, unlawfully did make and present and cause to be made and presented to an officer in the military service of the United States, to wit, to him, the said Thomas Franklin, who was then and there a Captain in the Subsistence Department of the Army thereof, and an officer in the United States Military Academy at West Point, New York, in the District and Circuit aforesaid, and who had been duly detailed as Treasurer of the said United States Military Academy, for payment by the said officer as such Treasurer aforesaid, he, the said Thomas Franklin, as such Treasurer, being the officer authorized to pay the same, a certain claim upon and against the Government of the United States, which said claim was upon an account purporting to be the account of him, the said Thomas Franklin, for provisions and cartage therefor, furnished by him to and for the Cadet Mess of the United States Military Academy aforesaid, and which said claim was in the words and figures following, to wit:

62 United States Military Academy.

The Cadet Mess

To Thos. Franklin, Dr.

1906.				
July 2nd.	To 10 Calves, 1323 lbs., at 12½¢.....	$165 37		
"	" Lambs, 646 lbs., at 13¢.....	83 98	249	35
" 3rd.	" 40 bbls. Potatoes, at 2.75.....	110 00		
	" 10 crates Tomatoes, at 1.50.....	15 00		
	" Cartage	2 50	127	50
3rd.	" 10 crates Cantaloupes, at 2.50.....	25 00		
	" Cartage	50	25	50
3rd.	" 1974 lbs. Chickens, at 18¢.....	355 32		
	" Cartage	1 95	357	27
12.	" 4 crates Lettuce, at 2.00.....	8 00		
	" 3 bbls. Cabbage, 1.50.....	4 50		
	" 30 crates Cantaloupes, at 2.50....	75 00		
	" 10 crates Peaches, at 2.50.....	25 00		
	" Cartage	2 35	114	85
16.	" 20 bbls. Potatoes, at 2.75.....	55 00		
	" 1 crate Green Peppers.....	2 50		
	" 1 crate Parsley.....	3 00		
	" Cartage	1 10	61	60
			$936	07

63

	Amount brought forward	936 07		936 07
July 21.	To 3 baskets Egg Plants, at 2.00.	6 00		
	4 bbls. Cabbage, 1.50.....	6 00		
	6 bask'ts Apples, 1.50.....	9 00		
	Cartage	65		21 65
July 21.	To 20 hind-quarters and ribs beef, 4091 lbs. at .11½.....	470 46		
July 23.	To 20 crates cantaloupes at 2.00..	40 00		
	Cartage	1 00		511 46
July 24.	To 20 lambs, 730 lbs., at .12½...	91 25		91 25
July 28.	To 20 sacks Potatoes, at 2.25.....	45 00		
	20 crates Cantaloupes, at 2.00..	40 00		
	Cartage	2 00		87 00
July 31.	To 20 lambs, 639 lbs., at .12½...	79 87		79 87
Aug. 1.	To 4 bskts. Green Peppers, at 1.25	5 00		
	18 crates Cantaloupes, at 2.00.	36 00		
	7 b'sk'ts Okra, at 1.75.....	12 25		
	800 Green Corn, at 1.50.....	12 00		
	5 crates Squash, at .50.....	2 50		
	20 crates Onions, at 1.50.....	30 00		
	28 bbls. Potatoes, at 2.00.....	56 00		153 75
				$1881 05

64

	Amount brought forward.....	1881 05		1881 05
Aug. 1.	To 10 crates Peaches, at 1.75.....	17 50		
	Cartage	4 80		22 30
				$1903 35

This account is correct and just.

(Signed) THOS. FRANKLIN,
Treasurer U. S. Military Academy,
Quartermaster and Commissary of Cadets.

The above statement of account against the Cadet Mess, U. S. Military Academy, is correct and just, and the receipt from the Treasurer of the U. S. Military Academy of One thousand nine hundred and three 35/100 Dollars, in payment in full is hereby acknowledged.

(Signed) THOS. FRANKLIN.

[Endorsed:] The Cadet Mess. Voucher No. 2*a*. Thos. Franklin. Settlement ending —— —, 19—. Check, No. —— $1903 35/100. Currency, ——. Total, ——.

65 and which said claim at the time and place when and where it was so made and presented and caused to be made and presented, was false, fictitious and fraudulent in the following respects, to wit; he, the said Thomas Franklin then and there well knowing

the same to be false, fictitious and fraudulent in the following respects, to wit:

In that the items therein under date of July 3rd, 1906, "to 40 bbls. Potatoes at $2.75, $110.00, to 10 crates Tomatoes at $1.50, $15.00, to 1974 lbs. Chickens at 18¢ $355.32", should have been instead thereof respectively "to 20 bbls. Potatoes at $2.25, $45.00, to 10 crates Tomatoes at $1.10, $11.00, to 1958 lbs. Chickens at 14¢, $274.12", and in that the items therein under date of July 12th 1906, "to 4 crates Lettuce at $2.00, $8.00, to 3 bbls. Cabbage at $1.50, $4.50, to 30 crates Cantaloupes at $2.50, $75.00, to 10 crates Peaches at $2.50, $25.00" should have been instead thereof respectively "to 4 crates Lettuce at $1.00, $4.00, to 3 bbls. Cabbage at 75¢ $2.25, to 30 crates Cantaloupes at $2.00, $60.00 to 10 crates Peaches at $2.00, $20.00", and in that the items therein under date of July 16th, 1906, "to 20 bbls. Potatoes at $2.75, $55.00, to 1 crate Green Peppers, $2.50, to 1 Crate Parsley, $3.00" should have been instead thereof respectively "to 20 bbls. Potatoes at $2.25, $45.00, to 1 crate Green Peppers $1.75, to 1 crate Parsley, $2.50", and in that the items therein under date of July 21st 1906 "to 3 baskets Egg Plants at $2.00, $6.00, to 4 bbls. Cabbage at $1.50, $6.00, to 6 bskts. Apples at $1.50, $9.00" should have been instead thereof respectively "to 3 baskets Egg Plants at $1.50, $4.50, to 4 bbls. Cabbage at 75¢ $3.00, to 6 bskts. Apples at $1.25, $7.50", and in that the item therein under date of July 23d, 1906, "to 20 crates Cantaloupes at $2.00 $40.00 should have been instead thereof "to 20 crates Cantaloupes at $1.75 $35.00" and in that the item therein under date of July 24th 1906 "to 20 lambs, 730 lbs. at 12½¢ $91.25" should have been instead thereof "to 20 lambs, 731 lbs. at 11¢, $80.41", and in that the items therein under date of July 28th 1906 "to 20 sacks Potatoes
66 at $2.25, $45.00, to 20 crates Cantaloupes at $2.00 $40.00, should have been instead thereof respectively "to 20 sacks Potatoes at $1.75, $35.00, to 20 crates Cantaloupes at $1.75, $35.00" and in that the item therein under date of July 31st, 1906 "to 20 lambs, 639 lbs. at 12½¢, $79.87" should have been instead thereof "to 20 lambs, 637 lbs. at 10¢, $66.89", and in that the items thereof under date of August 1st, 1906 "to 4 bskts. Green Peppers at $1.25, $5.00, to 18 crates Cantaloupes at $2.00, $36.00, to 7 bskts. Okra at $1.75, $12.25, to 800 Green Corn at $1.50, $12.00, to 5 crates Squash at 50¢ $2.50, to 20 crates Onions at $1.50, $30.00, to 28 bbls. Potatoes at $2.00, $56.00, to 10 crates Peaches at $1.75, $17.50", should have been instead thereof respectively "to 4 bskts. Green Peppers at 75¢ $3.00, to 18 crates Cantaloupes at $1.75, $31.50, to 7 bskts. Okra at $1.25, $8.75 to 800 Green Corn at $1.25, $10.00, to 5 crates Squash at 40¢ $2.00, to 20 crates Onions at 75¢, $15.00, to 28 bbls. Potatoes at $1.62½, $45.50, to 10 crates Peaches at $1.62½, $16.25", and in that each and every item therein for cartage on the articles therein set forth, to wit, "July 3d, 1906, Cartage $2.50, July 3d, 1906, Cartage 50¢, July 3d, 1906, Cartage $1.95, July 12th, 1906, Cartage $2.35, July 16th, 1906, Cartage $1.10, July 21st, 1906, Cartage 65¢, July 23d, 1906, Cartage $1.00, July 28th, 1906, Cartage $2.00, August 1st, 1906, Cartage $4.80", was, as the said Thomas Franklin

then and there well knew, utterly and entirely false, fictitious, and fraudulent, in that the said Thomas Franklin neither had in truth nor in fact paid any sum whatever for cartage upon the articles covered by the said account, nor had he become or rendered himself liable for cartage on such articles in any way or manner whatsoever, and in that no sum whatsoever was then due him, the said Thomas Franklin, on account of cartage upon the said articles; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Sec. 5438 R. S.)

67 *Eighth Count.*

And the jurors aforesaid, on their oaths aforesaid, do further present that Thomas Franklin, late of the City and County of New York, in the District and Circuit aforesaid, yeoman, heretofore, to wit, on the eighth day of September, in the year of our Lord one thousand nine hundred and six, at West Point, New York, in the District and Circuit aforesaid, unlawfully did make and present and cause to be made and presented to an officer in the military service of the United States, to wit, to him, the said Thomas Franklin, who was then and there a Captain in the Subsistence Department of the Army thereof, and an officer in the United States Military Academy at West Point, New York, in the District and Circuit aforesaid, and who had been duly detailed as Treasurer of the said United States Military Academy, for the payment by the said officer as such Treasurer aforesaid, he, the said Thomas Franklin, as such Treasurer, being the officer authorized to pay the same, a certain claim upon and against the Government of the United States, which said claim was upon an account purporting to be the account of him, the said Thomas Franklin, for provisions and cartage therefor, furnished by him to and for the Cadet Mess of the United States Military Academy aforesaid, and which said claim was in the words and figures following, to wit:

68 United States Military Academy.

The Cadet Mess

To Thos. Franklin, Dr.

1906.				
Aug. 4.	To 10 boxes Cal. Peaches, at 1.75.....	17 50		
	10 " " Pears 1.75.....	17 50		
	Cartage	1 00	36 00	
7.	20 Lambs, 690 lbs. at 12½¢.....	85 25	85 25	
1.	50 Trip R. R. Ticket used in trips to New York for the Cadet Mess....	31 50	31 50	
5.	Hotel bill, bed and breakfast.....	3 00		
	Lunch, .50, Dinner 1.50, car fare .30 R. R. fare .63.....	2 93	5 93	
9.	R. R. fare, 1.26, car fare .40.....	1 66		
	Breakfast, lunch and dinner.....	2 00	3 66	

11.	R. R. fare, 1.26, car fare, .30, lunch, .50, dinner, 1.00	3 06	3 06
13.	R. R. fare, 1.26, car fare, .25, lunch, 1.00	2 51	2 51
15.	R. R. Fare, 1.26, Car fare, .50, Hotel, 1.00, 4 meals, 3.75	6 51	6 51
16.	334 lbs. Fancy Chickens, at 16¢	53 44	53 44
20.	R. R. Fare, 1.26, Lunch, .75, Carfare .40	2 41	
26.	R. R. fare, 1.26, Lunch, .50, Dinner, 1.00, Carfare .50	3 26	
28.	R. R. fare, 1.26, Carfare .10	1 36	
30.	R. R. fare, 1.26, Carfare, .35, Lunch, .50, Dinner, 1.50	3 61	10 64
			$238 50

The above statement of account against the Cadet Mess, U. S. Military Academy, is correct and just, and the receipt from the Treasurer of the U. S. Military Academy or Two Hundred Thirty-Eight & 50/100 Dollars, in payment in full is hereby acknowledged.

(Signed) THOS. FRANKLIN.

[Endorsed:] The Cadet Mess. Voucher No. 2*b*. Capt. Thomas Franklin, West Point, N. Y. Settlement ending August 31st, 1906. Check, No. —; $—. Currency, 238.50. Total, 238.50.

69 and which said claim at the time and place when and where it was so made and presented and caused to be made and presented, was false, fictitious and fraudulent in the following respects, to wit; he, the said Thomas Franklin then and there well knowing the same to be false, fictitious and fraudulent in the following respects, to wit:

In that the items therein under date of August 4th, 1906, "to 10 boxes Cal. Peaches at $1.75, $17.50, to 10 boxes Cal. Pears, at $1.75, $17.50," should have been instead thereof respectively "to 10 boxes Cal. Peaches at $1.35, $13.50, to 10 boxes Cal. Pears at $1.35, $13.50", and in that the item therein under date of August 7th, 1906, "to 20 Lambs, 690 lbs., at 12½¢, $85.25," should have been instead thereof "to 20 Lambs, 695 lbs. at 10¼¢ $71.24", and in that the item therein under date of August 16th, 1906 "to 334 lbs. Fancy Chicken, at 16¢, $53.44," should have been instead thereof "to 334 lbs. Fancy Chicken, at 13½¢, $45.09", and in that the item therein for cartage on the articles therein set forth, to wit: "August 4, 1906, Cartage $1.00", was, as the said Thomas Franklin then and there well knew, utterly and entirely false, fictitious, and fraudulent, in that the said Thomas Franklin neither had in truth nor in fact paid any sum whatever for cartage upon the articles covered by the said account, nor had he become or rendered himself liable for cartage on such articles in any manner whatsoever, and in that no sum whatsoever was then and there due him, the said Thomas Franklin, on

account of cartage upon the said articles; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Sec. 5438 R. S.)

70 *Ninth Count.*

And the Jurors aforesaid, on their oaths aforesaid, do further present that Thomas Franklin, late of the City and County of New York, in the District and Circuit aforesaid, yeoman, heretofore, to wit, on the fourth day of August, in the year of our Lord one thousand nine hundred and six, at West Point, New York, in the District and Circuit aforesaid, unlawfully did make and present and cause to be made and presented to an officer in the military service of the United States, to wit, to him, the said Thomas Franklin, who was then and there a Captain in the Subsistence Department of the Army thereof, and an officer in the United States Military Academy at West Point, New York, in the District and Circuit aforesaid, and who had been duly detailed as Treasurer of the said United States Military Academy, for payment by the said officer as such Treasurer aforesaid, he, the said Thomas Franklin, as such Treasurer, being the officer authorized to pay the same, a certain claim upon and against a department of the United States, that is to say, a certain claim upon and against the Department of War of the said United States, which said claim was upon an account purporting to be the account of him, the said Thomas Franklin, for provisions and cartage therefor, furnished by him to and for the Cadet Mess of the United States Military Academy aforesaid, and which said claim was in the words and figures following, to wit:

71 United States Military Academy.

The Cadet Mess

To Thos. Franklin, Dr.

1906.					
July 2nd.	To 10 Calves, 1323 lbs., at 12½¢.....	165	37		
"	" Lambs, 646 lbs., at 13¢.....	83	98	249	35
" 3rd.	" 40 bbls. Potatoes, at 2.75.....	110	00		
	" 10 crates Tomatoes, at 1.50.....	15	00		
	" Cartage	2	50	127	50
3rd.	" 10 crates Cantaloupes, at 2.50.....	25	00		
	" Cartage		50	25	50
3rd.	" 1974 lbs. Chickens, at 18¢.....	355	32		
	" Cartage	1	95	357	27
12.	" 4 crates Lettuce, at 2.00.....	8	00		
	" 3 bbls. Cabbage, 1.50.....	4	50		
	" 30 crates Cantaloupes, at 2.50....	75	00		
	" 10 crates Peaches, at 2.50.....	25	00		
	" Cartage	2	35	114	85

16.	" 20 bbls. Potatoes, at 2.75	55 00		
	" 1 crate Green Peppers	2 50		
	" 1 crate Parsley	3 00		
	" Cartage	1 10	61 60	
				$936 07

72

	Amount brought forward	936 07	936 07	
July 21.	To 3 baskets Egg Plants, at 2.00.	6 00		
	4 Bbls. Cabbage, 1.50	6 00		
	6 bskts. Apples, 1.50	9 00		
	Cartage	65	21 65	
July 21.	To 20 hind-quarters and ribs beef, 4091 lbs. at 11½	470 46		
July 23.	To 20 crates cantaloupes at 2.00	40 00		
	Cartage	1 00	511 46	
July 24.	To 20 lambs, 730 lbs., at .12½	91 25	91 25	
July 28.	To 20 sacks Potatoes, at 2.25	45 00		
	20 crates Cantelopes, at 2.00	40 00		
	Cartage	2 00	87 00	
July 31.	To 20 lambs, 639 lbs., at .12½	79 87	79 87	
Aug. 1.	To 4 bskts. Green Peppers, at 1.25	5 00		
	18 crates Cantaloupes, at 2.00.	36 00		
	7 bskts. Okra, at 1.75	12 25		
	800 Green Corn, at 1.50	12 00		
	5 crates Squash, at .50	2 50		
	20 crates Onions, at 1.50	30 00		
	28 bbls. Potatoes, at 2.00	56 00	153 75	
				$1881 05

73

	Amount brought forward	1881 05	1881 05	
Aug. 1.	To 10 crates Peaches, at 1.75	17 50		
	Cartage	4 80	22 30	
				$1903 35

This account is correct and just.

(Signed) THOS. FRANKLIN,
Treasurer U. S. Military Academy,
Quartermaster and Commissary of Cadets.

The above statement of account against the Cadet Mess, U. S. Military Academy, is correct and just, and the receipt from the Treasurer of the U. S. Military Academy of One thousand nine hundred and three 35/100 Dollars, in payment in full is hereby acknowledged.

(Signed) THOS. FRANKLIN.

[Endorsed:] The Cadet Mess Voucher No. 2*a*. Thos. Franklin. Settlement ending ——— —, 19—. Check, No. ——— $1903 35/100. Currency, ———. Total, ———.

74 and which said claim at the time and place when and where it was so made and presented and caused to be made and presented, was false, fictitious and fraudulent in the following respects, to wit; he, the said Thomas Franklin then and there well knowing the same to be false, fictitious and fraudulent in the following respects, to wit:

In that the items therein under date of July 3rd, 1906, "to 40 bbls. Potatoes at $2.75, $110.00, to 10 crates Tomatoes at $1.50. $15.00, to 1974 lbs. Chickens at 18¢ $355.32", should have been instead thereof respectively "to 20 bbls. Potatoes at $2.25, $45.00. to 10 crates Tomatoes at $1.10, $11.00, to 1958 lbs. Chickens at 14¢. $274.12." and in that the items therein under date of July 12th 1906, "to 4 crates Lettuce at $2.00, $8.00, to 3 bbls. Cabbage at $1.50, $4.50, to 30 crates Cantaloupes at $2.50, $75.00, to 10 crates Peaches at $2.50, $25.00" should have been instead thereof respectively "to 4 crates Lettuce at $1.00, $4.00, to 3 bbls. Cabbage at 75¢ $2.25, to 30 crates Cantaloupes at $2.00, $60.00 to 10 crates Peaches at $2.00, $20.00", and in that the items therein under date of July 16th, 1906, "to 20 bbls. Potatoes at $2.75, $55.00, to 1 crate Green Peppers, $2.50, to 1 Crate Parsley, $3.00" should have been instead thereof respectively "to 20 bbls. Potatoes at $2.25, $45.00, to 1 crate Green Peppers $1.75, to 1 crate Parsley, $2.50", and in that the items therein under date of July 21st 1906 "to 3 baskets Egg Plants at $2.00, $6.00, to 4 bbls. Cabbage at $1.50, $6.00, to 6 bskts. Apples at -1.50, $9.00" should have been instead thereof respectively "to 3 baskets Egg Plants at $1.50, $4.50, to 4 bbls. Cabbage at 75¢ $3.00, to 6 bskts. Apples at $1.25, $7.50", and in that the item therein under date of July 23rd, 1906, "to 20 crates Cantaloupes at $2.00 $40.00 should have been instead thereof "to 20 crates Cantaloupes at $1.75 $35.00" and in that the item therein under date of July 24th 1906 "to 20 lambs, 730 lbs. at 12½¢ $91.25" should have been instead thereof "to 20 lambs, 731 lbs. at 11¢ $80.41", and in that the items therein under date of July 28th 1906 "to 20 sacks Potatoes at $2.25, $45.00, to 20 crates

75 Cantaloupes at $2.00 $40.00, should have been instead thereof respectively "to 20 sacks Potatoes at $1.75, $35.00, to 20 crates Cantaloupes at $1.75, $35.00" and in that the item therein under date of July 31st, 1906 "to 20 lambs, 639 lbs. at 12½¢. $79.87 should have been instead thereof "to 20 lambs, 637 lbs. at 10¢, $66.89", and in that the items thereof under date of August 1st, 1906 "to 4 bskts. Green Peppers at $1.25, $5.00, to 18 crates Cantaloupes at $2.00, $36.00, to 7 bskts. Okra at $1.75, $12.25, to 800 Green Corn at $1.50, $12.00, to 5 crates Squash at 50 ¢ $2.50, to 20 crates Onions at $1.50, $30.00, to 28 bbls. Potatoes at $2.00, $56.00, to 10 crates Peaches at $1.75, $17.50", should have been instead thereof respectively "to 4 b'sk'ts Green Peppers at 75¢ $3.00, to 18 crates Cantaloupes at $1.75, $31.50, to 7 baskets Okra at $1.25, $8.75 to 800 Green Corn at $1.25, $10.00, to 5 crates Squash at 40¢ $2.00, to 20 crates Onions at 75¢, $15.00, to 28 bbls. Potatoes at $1.62½, $45.50, to 10 crates Peaches at -1.62½, $16.25", and in that each and every item therein for cartage on the articles therein set forth, to wit, "July 3d, 1906, Cartage $2.50, July 3d, 1906, Cartage

50¢, July 3d, 1906, Cartage $1.95, July 12th, 1906, Cartage, $2.35, July 16th, 1906, Cartage $1.10, July 21st, 1906, Cartage 65¢, July 23d, 1906, Cartage $1.00, July 28th, 1906, Cartage $2.00 August 1st, 1906, Cartage $4.80", was, as the said Thomas Franklin then and there well knew, utterly and entirely false, fictitious and fraudulent, in that the said Thomas Franklin neither had in truth nor in fact paid any sum whatever for cartage upon the articles covered by the said account, nor had he become or rendered himself liable for cartage on such articles in any way or manner whatsoever, and in that no sum whatever was then due him, the said Thomas Franklin, on account of cartage upon the said articles; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Sec 5438 R. S.)

76 *Tenth Count.*

And the Jurors aforesaid, on their oaths aforesaid, do further present that Thomas Franklin, late of the City and County of New York, in the District and Circuit aforesaid, yeoman, heretofore, to wit, on the eighth day of September, in the year of our Lord one thousand nine hundred and six, at West Point, New York, in the District and Circuit aforesaid, unlawfully did make and present and cause to be made and presented to an officer in the military service of the United States, to wit, to him the said Thomas Franklin, who was then and there a Captain in the Subsistence Department of the Army thereof, and an officer in the United States Military Academy at West Point, New York, in the District and Circuit aforesaid, and who had been duly detailed as Treasurer of the said United States Military Academy, for payment by the said officer as such Treasurer aforesaid, he, the said Thomas Franklin, as such Treasurer, being the officer authorized to pay the same, a certain claim upon and against a department of the United States, that is to say, a certain claim upon and against the Department of War of the said United States, which said claim was upon an account purporting to be the account of him, the said Thomas Franklin, for provisions and cartage therefor, furnished by him to and for the Cadet Mess of the United States Military Academy aforesaid, and which said claim was in the words and figures following, to wit:

77 United States Military Academy.

The Cadet Mess

To Thos. Franklin, Dr.

1906.					
Aug.	4.	To 10 boxes Cal. Peaches, at 1.75.....	17 50		
		10 " " Pears 1.75.....	17 50		
		Cartage	1 00	36 00	
	7.	20 Lambs, 690 lbs. at 12½¢.....	85 25	85 25	
	1.	50 Trip R. R. Ticket used in trips to New York for the Cadet Mess....	31 50	31 50	

5.	Hotel bill, bed and breakfast.....	3 00	
	Lunch, .50, Dinner 1.50, car fare .30 R. R. fare .63.....	2 93	5 93
9.	R. R. fare, 1.26, car fare .40.....	1 66	
	Breakfast, lunch and dinner.....	2 00	3 66
11.	R. R. fare, 1.26, car fare, .30, lunch, .50, dinner, 1.00.....	3 06	3 06
13.	R. R. fare, 1.26, car fare, .25, lunch, 1.00	2 51	2 51
15.	R. R. Fare, 1.26, Car fare, .50, Hotel, 1.00, 4 meals, 3.75.....	6 51	6 51
16.	334 lbs. Fancy Chickens, at 16¢...	53 44	53 44
20.	R. R. Fare, 1.26, Lunch, .75, Carfare .40	2 41	
26.	R. R. fare, 1.26, Lunch, .50, Dinner, 1.00, Carfare .50.....	3 26	
28.	R. R. fare, 1.26, Carfare .10.....	1 36	
30.	R. R. fare, 1.26, Carfare, .35, Lunch, .50, Dinner, 1.50.....	3 61	10 64
			$238 50

The above statement of account against the Cadet Mess, U. S. Military Academy, is correct and just, and the receipt from the Treasurer of the U. S. Military Academy of Two Hundred Thirty-Eight & 50/100 Dollars, in payment in full is hereby acknowledged.

(Signed) THOS. FRANKLIN.

[Endorsed:] The Cadet Mess. Voucher No. 2*b*. Capt. Thomas Franklin, West Point, N. Y. Settlement ending August 31st, 1906. Check, No. —; $—. Currency, 238.50. Total, 238.50.

78 and which said claim at the time and place when and where it was so made and presented and caused to be made and presented, was false fictitious and fraudulent in the following respects, to wit: he, the said Thomas Franklin then and there well knowing the same to be false, fictitious and fraudulent in the following respects, to wit:

In that the items therein under date of August 4th, 1906, "to 10 boxes Cal. Peaches at $1.75, $17.50, to 10 boxes Cal. Pears, at $1.75, $17.50", should have been instead thereof respectively "to 10 boxes Cal. Peaches at $1.35, $13.50, to 10 boxes Cal. Pears at $1.35, $13.50", and in that the item therein under date of August 7th, 1906, "to 20 Lambs, 690 lbs., at 12½¢ $85.25", should have been instead thereof "to 20 Lambs, 695 lbs. at 10¼¢ $71.24", and in that the item therein under date of August 16th, 1906 "to 334 lbs. Fancy Chicken, at 16¢, $53.44," should have been instead thereof "to 334 lbs. Fancy Chicken, at 13½¢, $45.09", and in that the item therein for cartage on the articles therein set forth, to wit: "August 4, 1906, Cartage $1.00", was, as the said Thomas Franklin then and there well knew, utterly and entirely false, fictitious and fraudulent, in that the said Thomas Franklin neither had in truth nor in

fact paid any sum whatever for cartage upon the articles covered by the said account, nor had he become or rendered himself liable for cartage on such articles in any way or manner whatsoever, and in that no sum whatsoever was then and there due him, the said Thomas Franklin, on account of cartage upon the said articles; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Sec. 5438 R. S.)

79 *Eleventh Count.*

And the Jurors aforesaid, on their oaths aforesaid, do further present that Thomas Franklin, late of the City and County of New York, in the District and Circuit aforesaid, yeoman, heretofore, to wit, on the fourth day of August, in the year of our Lord one thousand nine hundred and six, at West Point, New York, in the District and Circuit aforesaid, unlawfully did make and present and cause to be made and presented to an officer in the military service of the United States, to wit, to him, the said Thomas Franklin, who was then and there a Captain in the Subsistence Department of the Army thereof, and an officer in the United States Military Academy at West Point, New York, in the District and Circuit aforesaid, and who had been duly detailed as Treasurer of the said United States Military Academy, for payment by the said officer as such Treasurer aforesaid, he, the said Thomas Franklin, as such Treasurer, being the officer authorized to pay the same, a certain claim upon and against an officer of the United States, that is to say, a certain claim upon and against the said Thomas Franklin, as such Treasurer of the said United States Military Academy, he being then and there acting as such Treasurer, and being the officer charged with all matters relating to the pay and accounts of the cadets at the said United States Military Academy and with the duty of paying for the provisions purchased for the use of the Cadet Mess at the said United States Military Academy, and which said claim was in the words and figures following, to wit:

80 United States Military Academy.

The Cadet Mess

To Thos. Franklin, Dr.

1906.

July 2nd.	To 10 Calves, 1323 lbs., at 12½¢	$165	37		
"	" Lambs, 646 lbs., at 13¢	83	98	249	35
" 3rd.	" 40 bbls. Potatoes, at 2.75	110	00		
	" 10 crates Tomatoes, at 1.50	15	00		
	" Cartage	2	50	127	50
3rd.	" 10 crates Cantaloupes, at 2.50	25	00		
	" Cartage		50	25	50
3rd.	" 1974 lbs. Chickens, at 18¢	355	32		
	" Cartage	1	95	357	27
12.	" 4 crates Lettuce, at 2.00	8	00		

	" 3 bbls. Cabbage, 1.50	4 50		
	" 30 crates Cantaloupes, at 2.50	75 00		
	" 10 crates Peaches, at 2.50	25 00		
	" Cartage	2 35	114	85
16.	" 20 bbls. Potatoes, at 2.75	55 00		
	" 1 crate Green Peppers	2 50		
	" 1 crate Parsley	3 00		
	" Cartage	1 10	61	60
			$936	07

81

	Amount brought forward	936 07	936	07
July 21.	To 3 baskets Egg Plants, at 2.00.	6 00		
	4 bbls. Cabbage, 1.50	6 00		
	6 bskts. Apples, 1.50	9 00		
	Cartage	65	21	65
July 21.	To 20 hind-quarters and ribs beef, 4091 lbs. at 11½	470 46		
July 23.	To 20 crates cantaloupes at 2.00	40 00		
	Cartage	1 00	511	46
July 24.	To 20 lambs, 730 lbs., at .12½	91 25	91	25
July 28.	To 20 sacks Potatoes, at 2.25	45 00		
	20 crates Cantaloupes, at 2.00	40 00		
	Cartage	2 00	87	00
July 31.	To 20 lambs, 639 lbs., at .12½	79 87	79	87
Aug. 1.	To 4 bskts. Green Peppers, at 1.25	5 00		
	18 crates Cantaloupes, at 2.00.	36 00		
	7 bskts. Okra, at 1.75	12 25		
	800 Green Corn, at 1.50	12 00		
	5 crates Squash, at .50	2 50		
	20 crates Onions, at 1.50	30 00		
	28 bbls. Potatoes, at 2.00	56 00	153	75
			$1881	05

81½

	Amount brought forward	1881 05	1881	05
Aug. 1.	To 10 crates Peaches, at 1.75	17 50		
	Cartage	4 80	22	30
			$1903	35

This account is correct and just.

(Signed) THOS. FRANKLIN,
Treasurer U. S. Military Academy,
Quartermaster and Commissary of Cadets.

The above statement of account against the Cadet Mess, U. S. Military Academy, is correct and just, and the receipt from the Treasurer of the U. S. Military Academy of One thousand nine hundred and three 35/100 Dollars, in payment in full is hereby acknowledged.

(Signed) THOS. FRANKLIN.

[Endorsed:] The Cadet Mess Voucher No. 2a. Thos. Franklin. Settlement ending —— —, 19—. Check, No. —— $1903 35/100. Currency, ——. Total, ——.

82 and which said claim at the time and place when and where it was so made and presented and caused to be made and presented, was false, fictitious and fraudulent in the following respects, to wit: he, the said Thomas Franklin then and there well knowing the same to be false, fictitious and fraudulent in the following respects, to wit:

In that the items therein under date of July 3rd, 1906, "to 40 bbls. Potatoes at $2.75, $110.00, to 10 crates Tomatoes at $1.50, $15.00, to 1974 lbs. Chickens at 18¢ $355.32," should have been instead thereof respectively "to 20 bbls. Potatoes at $2.25, $45.00, to 10 crates Tomatoes at $1.10, $11.00, to 1958 lbs. Chickens at $14¢, $274.12," and in that the items therein under date of July 12th 1906, "to 4 crates Lettuce at $2.00, $8.00, to 3 bbls. Cabbage at $1.50, $4.50, to 30 crates Cantaloupes at $2.50, $75.00, to 10 crates Peaches at $2.50, $25.00" should have been instead thereof respectively "to 4 crates Lettuce at $1.00, $4.00, to 3 bbls. Cabbage at 75¢ $2.25, to 30 crates Cantaloupes at $2.00, $60.00 to 10 crates Peaches at $2.00, $20.00," and in that the items therein under date of July 16th, 1906, "to 20 bbls. Potatoes at $2.75, $55.00, to 1 crate Green Peppers, $2.50 to 1 crate Parsley, $3.00" should have been instead thereof respectively "to 20 bbls. Potatoes at $2.25, $45.00, to 1 crate Green Peppers $1.75, to 1 crate Parsley, $2.50," and in that the items therein under date of July 21st 1906 "to 3 baskets Egg Plants at $2.00, $6.00, to 4 bbls. Cabbage at $1.50, $6.00, to 6 bskts Apples at $1.50, $9.00" should have been instead thereof respectively to 3 baskets Egg Plants at $1.50, $4.50, to 4 bbls. Cabbage at 75¢, $3.00, to 6 bskts Apples at $1.25, $7.50," and in that the item therein under date of July 23rd, 1906, "to 20 crates Cantaloupes at $2.00 $40.00 should have been instead thereof "to 20 crates Cantaloupes at $1.75 $35.00" and in that the item therein under date of July 24th 1906 "to 20 lambs, 730 lbs. at 12½¢ $91.25" should have been instead thereof "to 20 lambs, 731 lbs. at 11¢ $80.41," and

83 in that the items therein under date of July 28th 1906 "to 20 sacks Potatoes at $2.25, $45.00, to 20 crates Cantaloupes at $2.00 $40.00, should have been instead thereof respectively "to 20 sacks Potatoes at $1.75, $35.00, to 20 crates Cantaloupes at $1.75, $35.00" and in that the item therein under date of July 31st, 1906 "to 20 lambs, 639 lbs. at 12½¢, $79.87" should have been instead thereof "to 20 lambs, 637 lbs. at 10¢, $66.89," and in that the items thereof under date of August 1st, 1906 "to 4 bskts Green Peppers at $1.25, $5.00 to 18 crates Cantaloupes at $2.00, $36.00, to 7 bskts Okra at $1.75, $12.25, to 800 Green Corn at $1.50, $12.00, to 5 crates Squash at 50¢ $2.50, to 20 crates Onions at $1.50, $30.00, to 28 bbls. Potatoes at $2.00, $56.00, to 10 crates Peaches at $1.75, $17.50," should have been instead thereof respectively "to 4 bskts Green Peppers at 75¢ $3.00, to 18 crates Cantaloupes at $1.75, $31.50, to 7 bskts Okra at $1.25, $8.75 to 800 Green Corn at $1.25,

$10.00, to 5 crates Squash at 40¢ $2.00, to 20 crates Onions at 75¢, $15.00, to 28 bbls. Potatoes at $1.62½, $45.50, to 10 crates Peaches at $1.62½, $16.25," and in that each and every item therein for cartage on the articles therein set forth, to wit "July 3d, 1906, Cartage $2.50, July 3d, 1906, Cartage 50¢, July 3d, 1906, Cartage $1.95, July 12th, 1906, Cartage $2.35, July 16th, 1906, Cartage $1.10, July 21st, 1906, Cartage 65¢, July 23d, 1906, Cartage $1.00, July 28th, 1906, Cartage $2.00, August 1st, 1906, Cartage $4.80," was, as the said Thomas Franklin then and there well knew, utterly and entirely false, fictitious, and fraudulent, in that the said Thomas Franklin neither had in truth nor in fact paid any sum whatever for cartage upon the articles covered by the said account, nor had he become or rendered himself liable for cartage on such articles in any way or manner whatsoever, and in that no sum whatsoever was then due him, the said Thomas Franklin, on account of cartage upon the said articles; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such cases made and provided. (Sec. 5438 R. S.)

84 *Twelfth Count.*

And the jurors aforesaid, on their oaths aforesaid, do further present that Thomas Franklin, late of the City and County of New York, in the District and Circuit aforesaid, yeoman, heretofore, to wit, on the eighth day of September, in the year of our Lord one thousand nine hundred and six, at West Point, New York, in the District and Circuit aforesaid, unlawfully did make and present and cause to be made and presented to an officer in the military service of the United States, to wit, to him, the said Thomas Franklin, who was then and there a Captain in the Subsistence Department of the Army thereof, and an officer in the United States Military Academy at West Point, New York, in the District and Circuit aforesaid, and who had been duly detailed as Treasurer of the said United States Military Academy, for payment by the said officer as such Treasurer aforesaid, he, the said Thomas Franklin, as such Treasurer, being the officer authorized to pay the same, a certain claim upon and against an officer of the United States, that is to say, a certain claim upon and against the said Thomas Franklin, as such Treasurer of the said United States Military Academy, he being then and there acting as such Treasurer, and being the officer charged with all matters relating to the pay and accounts of the cadets at the said United States Military Academy and with the duty of paying for the provisions purchased for the use of the Cadet Mess at the said United States Military Academy, and which said claim was in the words and figures following, to wit:

85 United States Military Academy.

The Cadet Mess

To Thos. Franklin, Dr.

1906.			
Aug. 4.	To 10 boxes Cal. Peaches, at 1.75.....	17 50	
	10 " " Pears 1.75.....	17 50	
	Cartage	1 00	36 00
7.	20 Lambs, 690 lbs. at 12½¢.....	85 25	85 25
1.	50 Trip R. R. Ticket used in trips to New York for the Cadet Mess....	31 50	31 50
5.	Hotel bill, bed and breakfast.....	3 00	
	Lunch, .50, Dinner 1.50, car fare .30 R. R. fare .63.....	2 93	5 93
9.	R. R. fare, 1.26, car fare .40.....	1 66	
	Breakfast, lunch and dinner.....	2 00	3 66
11.	R. R. fare, 1.26, car fare, .30, lunch, .50, dinner, 1.00.....	3 06	3 06
13.	R. R. fare, 1.26, car fare, .25, lunch, 1.00	2 51	2 51
15.	R. R. Fare, 1.26, Car fare, .50, Hotel, 1.00, 4 meals, 3.75.....	6 51	6 51
16.	334 lbs. Fancy Chickens, at 16¢....	53 44	53 44
20.	R. R. Fare, 1.26, Lunch, .75, Car-fare .40	2 41	
26.	R. R. fare, 1.26, Lunch, .50, Dinner, 1.00, Carfare .50.....	3 26	
28.	R. R. fare, 1.26, Carfare .10.....	1 36	
30.	R. R. fare, 1.26, Carfare, .35, Lunch, .50, Dinner, 1.50.....	3 61	10 64
			$238 50

The above statement of account against the Cadet Mess, U. S. Military Academy, is correct and just, and the receipt from the Treasurer of the U. S. Military Academy of Two Hundred Thirty-Eight & 50/100 Dollars, in payment in full is hereby acknowledged.

(Signed) THOS. FRANKLIN.

[Endorsed:] The Cadet Mess. Voucher No. 2*b*. Capt. Thomas Franklin, West Point, N. Y. Settlement ending August 31st, 1906. Check, No. —; $—. Currency, 238.50. Total, 238.50.

86 and which said claim at the time and place when and where it was so made and presented and caused to be made and presented, was false, fictitious and fraudulent in the following respects, to wit: he, the said Thomas Franklin then and there well knowing the same to be false, fictitious and fraudulent in the following respects, to wit:

In that the items therein under date of August 4th, 1906, "to 10 boxes Cal. Peaches at $1.75, $17.50, to 10 boxes Cal. Pears, at $1.75,

$17.50," should have been instead thereof respectively to 10 Cal. Peaches at $1.35, $13.50, to 10 boxes Cal. Pears at $1.35, $13.50," and in that the item therein under date of August 7th, 1906, "to 20 Lambs, 690 lbs., at 12½¢, $85.25," should have been instead thereof "to 20 Lambs, 695 lbs. at 10¼¢, $71.24," and in that the item therein under date of August 16th, 1906 "to 334 lbs. Fancy Chicken, at 16¢, $53.44," should have been instead thereof "to 334 lbs. Fancy Chicken, at 13½¢, $45.00," and in that the item therein for cartage on the articles therein set forth, to wit: "August 4, 1906, Cartage $1.00," was, as the said Thomas Franklin then and there well knew, utterly and entirely false, fictitious and fraudulent, in that the said Thomas Franklin neither had in truth nor in fact paid any sum whatever for cartage upon the articles covered by the said account, nor had he become or rendered himself liable for cartage on such articles in any way or manner whatsoever, and in that no sum whatsoever was then and there due him, the said Thomas Franklin, on account of cartage upon the said articles; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Sec. 5438 R. S.)

——— ———,
U. S. Attorney.

87 Endorsed: U. S. Circuit Court. The United States of America, vs. Thomas Franklin. Indictment. Presenting false vouchers for approval and making false claims. U. S. Rev. St. 5438. Henry A. Wise, U. S. Attorney. A True Bill: J. Lawrence Aspinwall, Foreman.—U. S. Circuit Court, Southern District of N. Y. Filed Jul- 16, 1909. John A. Shields, Clerk.

1909.
Oct. 27 Deft. pleads not guilty with leave to withdraw.
Nov. 4 Filed Demurrer.
8 Demurrer overruled Memo. endorsed on brief. Defendant excepts.
Dec. 13 Ordered consolidated with Indictments No. 2-147 & 2-149 for further entries see 2-149.

88 *Demurrer.*

Circuit Court of the United States for the Southern District of New York.

THE UNITED STATES OF AMERICA
vs.
THOMAS FRANKLIN.

Demurrer to Indictment.

And now comes Thomas Franklin, the defendant above named, by his attorney, and says:

That the indictment filed against him on the 16th day of July,

1909, in each and every count thereof, and the matter therein contained in the manner and form as the same are stated and set forth are not sufficient in law, and that the said Thomas Franklin is not bound by the law of the land to answer the same, and this he is ready to verify.

Wherefore, for want of sufficient indictment in this behalf, the said Thomas Franklin prays judgment, and that by the court he may be dismissed and discharged from the said premises in the said indictment and each and every count thereof specified.

And for special cause of demurrer to said indictment the said defendant shows to the court here the following, that is to say:

(1) That each of the separate counts in said indictment is insufficient in law, and the said defendant Thomas Franklin demurs to each and every of said counts separately and severally, for the reason that all of the allegations contained in each and every of the said counts are insufficient to charge the said defendant with any offence against the laws of the United States, and are not sufficient to constitute a crime as against the said defendant Thomas
89 Franklin.

(2) And the said defendant Thomas Franklin further demurs to each of the said counts for the reason that the said counts are, and each of them is, bad for duplicity, in that each of the said counts purports to charge the said defendant Thomas Franklin with several separate and distinct offences.

(3) That each of the separate counts in said indictment is further insufficient in law, and the said defendant Thomas Franklin demurs to each of said counts separately and severally, for the reason that the said counts, contrary to the Sixth Amendment to the Constitution of the United States do not, and neither of them does, apprise the defendant with reasonable certainty of the precise nature and cause of the accusation against him, and with a certainty sufficient to allow him to prepare his defense and to plead the judgment as a bar to any subsequent prosecution for the same offence.

(4) That each of the separate counts in said indictment is further insufficient in law, and the said defendant Thomas Franklin demurs to each of said counts separately and severally, for the reason that the said counts, and each of them contains on its face a fatal repugnance in this and other respects; that the claim as set out in the said count is a claim against the Cadet Mess, whereas the claim alleged to have been made and presented for approval in counts "First" "Second," "Third," "Ninth" and "Tenth" is alleged to be a claim upon the War Department of the United States; in counts "Fourth," "Fifth," "Sixth," "Eleventh" and "Twelfth" the claim is alleged to be a claim against the defendant Thomas Franklin; and in counts "Seventh" and "Eighth" the claim is alleged to be a claim upon and against the Government of the United States.

And this defendant prays that each of the said specifica-
90 tions hereinabove set forth may be taken as if separately made under the several respective demurrers, to each of the several respective counts in the said indictment, and to the demurrer to the indictment as a whole, the same as if repeated as many times

as would be required to make each of said specifications apply to said indictment as a whole and separately to each of the separate counts thereof.

Dated, New York, November 4th, 1909.

By S. T. ANSELL,
Attorney for Defendant.

U. S. Circuit Court, Southern District of N. Y. Filed Nov. 4, 1909. John A. Shields, Clerk.

91 United States Circuit Court, Southern District of New York.

THE UNITED STATES
vs.
THOMAS FRANKLIN.

Opinion of Judge Hand on Demurrers to Indictments.

As to Point I:

This point is answered by U. S. v. Northway, 120 U. S. 327, where the indictment read "as president and agent", though the statute defined two separate offenses; one as president, one as agent. It is perfectly obvious that there was no intention to charge two offenses.

As to Point II:

The discrepancies between the claim and the actual prices paid are sufficiently set out. The pleader has not relied on a word stating only a legal conclusion, like "fraudulent". It is captious to quarrel with the phrase "should have been." Everybody knows that this is intended to cover the prices actually paid by the defendant. It is clear that they charge him with putting in the bills what he said he had paid. To hold otherwise would be to introduce needless perversity into such matters.

As to Point III:

As a mere allegation of fact, i. e. that the Superintendent had authority to approve the claim, I think it is not demurrable. Cochran v. U. S., 157 U. S. 286. True, it is an allegation of law but so is the allegation, "made in accordance with the provisions of Section 5211." Had it been necessary to rely upon such an allegation in sustaining the pleading upon the *corpus delicti*. I should think otherwise, but there are many incidental allegations, necessarily stated with some admixture of law. Were it not so, indictments would be often quite interminable. Here the Superintendent is identified as being an officer, within Section 5438, "authorized by law" to approve the account. That allegation is quite enough to identify him as one of those included under the statute and to advise the defendant of what officer they intend. So far as concerns the argument that he could not have been so authorized under the statute, it does not convince me. Whatever the legal status of the "Cadet
92 Mess" it is quite clear to me that the United States had power to give to the commanding officer of the cadets the right

to approve or disapprove bills presented to them. They have not the rights of officers in the service; they are yet in tutelage and the United States has power to protect them in their contracts, by sequestrating their pay and protecting its disbursement. Whether the regulations in fact give the Superintendent that power is a matter which will come up on the trial.

Demurrers overruled.

L. H., *J.*

U. S. Circuit Court, Southern District of N. Y. Filed Nov. 8, 1909. John A. Shields, Clerk.

93 *Indictment.*

Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

At a Stated Term of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, begun and held in the City of New York, within and for the District and Circuit aforesaid, on the second Wednesday of May, in the year of our Lord one thousand nine hundred and nine, and continued by adjournment to and including the fifteenth day of June, in the year of our Lord one thousand nine hundred and nine.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The Jurors of the United States of America within and for the District and Circuit aforesaid, on their oath present that on the second day of July, in the year nineteen hundred and six, and for a long period of time prior thereto there has existed a certain tract of land in the County of Orange, and in said State and Southern District of New York, purchased and accepted by the Congress of the United States by the consent of the Legislature of the said State of New York, and used by the United States as a fort and military post and reservation, under the name of West Point, over which said tract exclusive jurisdiction was, long before the said second day of July, in the year nineteen hundred and six, and subsequent to such purchase, ceded by the State of New York to, and ever since such cession, has been exercised by the United States, together with exclusive legislation in all cases whatsoever.

94 And the grand jurors aforesaid, on their oath aforesaid, do further present that one Thomas Franklin, late of the City and County of New York, in the District and Circuit aforesaid, heretofore, to wit, on the said second day of July, in the year nineteen hundred and six, at and within the said fort and military post and reservation under the name of West Point, aforesaid, and in the said State and Southern District of New York, with force and arms, the sum of four hundred and ninety-five dollars and seventy-eight cents, that is to say, divers United States notes, Treasury notes, legal

tender notes, silver certificates, and National Bank notes, emitted by and under authority of the United States, and divers gold coins, silver coins, nickel coins, and copper coins of the coinage of the said United States, (a more particular description of which several notes and coins is to the Grand Jurors unknown and cannot therefore be here set forth) of the value of four hundred and ninety-five dollars and seventy-eight cents of the goods, chattels and personal property of all the cadets then forming the Cadet Corps of the United States Military Academy at West Point, aforesaid, the names of which said cadets are to the Grand Jurors unknown, and to give whose names would occupy too much space in this indictment, but for whose names reference is hereby made to the muster rolls of the said United States Military Academy on which appears a list of the said cadets then and there being found, then and there feloniously did steal, take and carry away.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that the said Thomas Franklin, in manner and form and at the time aforesaid, and in a place which had been ceded to and was and is under the jurisdiction of the United States unlawfully did commit the offense of grand larceny in the second degree; against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided. (Sec. 5391 R. S. U. S.)

95 *Second Count.*

And the grand jurors aforesaid, upon their oath aforesaid, do further present that on the fourth day of August, in the year nineteen hundred and six, and for a long period of time prior thereto there has existed a certain tract of land in the County of Orange, and in said State and Southern District of New York, purchased and accepted by the Congress of the United States by the consent of the Legislature of the said State of New York, and used by the United States as a fort and military post and reservation, under the name of West Point, over which said tract exclusive jurisdiction was, long before the said fourth day of August, in the year nineteen hundred and six, and subsequent to such purchase, ceded by the State of New York to, and ever since such cession, has been exercised by the United States, together with exclusive legislation in all cases whatsoever.

And the grand jurors aforesaid, on their oath aforesaid, do further present that said Thomas Franklin, late of the City and County of New York, in the District and Circuit aforesaid, heretofore, to wit, on the fourth day of August, in the year nineteen hundred and six, at and within the said fort and military post and reservation under the name of West Point, aforesaid, and in the said State and Southern District of New York, with force and arms, the sum of two hundred and ninety-three dollars and twelve cents, that is to say, divers United States notes, Treasury notes, legal tender notes, silver certificates, and National Bank notes, emitted by and under authority of the United States, and divers gold coins, silver coins,

nickel coins, and copper coins of the coinage of the said United States, (a more particular description of which several notes and coins is to the Grand Jurors unknown and cannot therefore be here set forth) of the value of two hundred and ninety-three dollars and twelve cents of the goods, chattels and personal property of all the cadets then forming the Cadet Corps of the United States
96 Military Academy at West Point, aforesaid, the names of which said cadets are to the Grand Jurors unknown, and to give whose names would occupy too much space in this indictment, but for whose names reference is hereby made to the muster rolls of the said United States Military Academy on which appears a list of the said Cadets, then and there being found, then and there feloniously did steal, take and carry away.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that the said Thomas Franklin, in manner and form and at the time aforesaid, and in a place which had been ceded to and was and is under the jurisdiction of the United States unlawfully did commit the offence of grand larceny in the second degree; against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided. (Sec. 5391 R. S. U. S.)

97 *Third Count.*

And the grand jurors aforesaid, upon their oath aforesaid, do further present that on the eighth day of September, in the year nineteen hundred and six, and for a long period of time prior thereto there has existed a certain tract of land in the County of Orange, and in said State and Southern District of New York, purchased and accepted by the Congress of the United States by the consent of the Legislature of the said State of New York, and used by the United States as a fort and military post and reservation, under the name of West Point, over which said tract exclusive jurisdiction was, long before the said eighth day of September, in the year nineteen hundred and six, and subsequent to such purchase, ceded by the State of New York to, and ever since such cession, has been exercised by the United States, together with exclusive legislation in all cases whatsoever.

And the grand jurors aforesaid, on their oath aforesaid, do further present that said Thomas Franklin, late of the City and County of New York, in the District and Circuit aforesaid, heretofore, to wit, on the said eighth day of September, in the year nineteen hundred and six, at and within the said fort and military post and reservation under the name of West Point, aforesaid, and in the said State and Southern District of New York, with force and arms, the sum of thirty dollars and thirty-six cents, that is to say, divers United States notes, Treasury notes, legal tender notes, silver certificates, and National Bank notes, emitted by and under authority of the United States, and divers gold coins, silver coins, nickel coins, and copper coins of the coinage of the said United States, (a more particular description of which several notes and coins is to the Grand Jurors

unknown and cannot therefore be here set forth) of the value of thirty dollars and thirty-six cents of the goods, chattels and personal property of all the cadets then forming the Cadet Corps of the United States Military Academy at West Point, aforesaid, the names
98 of which said cadets are to the Grand Jurors unknown, and to give whose names would occupy too much space in this indictment, but for whose names reference is hereby made to the muster rolls of the said United States Military Academy on which appears a list of the said cadets, then and there being found, then and there feloniously did steal, take and carry away.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that the said Thomas Franklin, in manner and form and at the time aforesaid, and in a place which had been ceded to and was and is under the jurisdiction of the United States unlawfully did commit the offence of grand larceny in the second degree; against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided. (Sec. 5391 R. S. U. S.)

99 *Fourth Count.*

And the grand jurors aforesaid, upon their oath aforesaid, do further present that on the second day of July, in the year nineteen hundred and six, and for a long period of time prior thereto there has existed a certain tract of land in the County of Orange, and in the said State and Southern District of New York, purchased and accepted by the Congress of the United States, by the consent of the Legislature of the said State of New York, and used by the United States as a fort and military post and reservation, under the name of West Point, over which said tract exclusive jurisdiction was, long before the said second day of July, in the year nineteen hundred and six, and subsequent to such purchase, ceded by the State of New York to, and ever since such cession, has been exercised by the United States, together with exclusive legislation in all cases whatsoever.

And the grand jurors aforesaid, on their oath aforesaid, do further present that said Thomas Franklin on the said second day of July, in the year nineteen hundred and six, at and within the said fort and military post and reservation, under the name of West Point, aforesaid, in the said State and Southern District of New York, being then and there the Treasurer of the United States Military Academy at West Point, aforesaid, and as such Treasurer, then and there having in his possession, custody and control, certain goods, chattels and personal property of all the cadets then forming the Cadet Corps of the United States Military Academy at West Point, aforesaid, the names of which said cadets are to the Grand Jurors unknown, and to give whose names would occupy too much space in this indictment, but for whose names reference is hereby made to the muster rolls of the said United States Military Academy on which appears a list of the said cadets, the true owners thereof, to wit, the same goods, chattels and personal property mentioned, described and set forth in the First Count of this Indictment, reference to which is hereby made,

of the value mentioned and set forth therein, did feloniously
100 appropriate the said goods, chattels and personal property to his own use, with intent to deprive and defraud the said cadets aforesaid, of the same, and of the use and benefit thereof, and the same goods, chattels and personal property of the said cadets aforesaid, did then and there and thereby feloniously steal.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that the said Thomas Franklin, in manner and form and at the time aforesaid, and in a place which had been ceded to and was and is under the jurisdiction of the United States unlawfully did commit the offence of grand larceny in the second degree: against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

(Sec 2 (3) Chap. 576, Act of July 7, '98 and Secs. 528 & 531, Penal Code of New York.)

101 *Fifth Count.*

And the grand jurors aforesaid, upon their oath aforesaid, do further present that on the fourth day of August, in the year nineteen hundred and six, and for a long period of time prior thereto there has existed a certain tract of land in the County of Orange, and in said State and Southern District of New York, purchased and accepted by the Congress of the United States, by the consent of the Legislature of the said State of New York, and used by the United States as a fort and military post and reservation, under the name of West Point, over which said tract exclusive jurisdiction was, long before the said fourth day of August, in the year nineteen hundred and six, and subsequent to such purchase, ceded by the state of New York to, and ever since such cession, has been exercised by the United States, together with exclusive legislation in all cases whatsoever.

And the grand jurors aforesaid, on their oath aforesaid, do further present that said Thomas Franklin on the said fourth day of August, in the year nineteen hundred and six, at and within the said fort and military post and reservation, under the name of West Point, aforesaid, in said State and Southern District of New York, being then and there the Treasurer of the United States Military Academy at West Point, aforesaid, and as such Treasurer, then and there having in his possession, custody and control, certain goods, chattels and personal property of all the cadets then forming the Cadet Corps of the United States Military Academy at West Point, aforesaid, the names of which said cadets are to the Grand Jurors unknown, and to give whose names would occupy too much space in this indictment, but for whose names reference is hereby made to the muster rolls of the said United States Military Academy on which appears a list of the said cadets, the true owners thereof, to wit, the same goods, chattels and personal property mentioned, described and set forth in the Second Count of this Indictment, reference to which is hereby made, of the value mentioned and set forth
102 therein, did feloniously appropriate the said goods, chattels and personal property to his own use, with intent to deprive

and defraud the said cadets aforesaid, of the same, and of the use and benefit thereof, and the same goods, chattels and personal property of the said cadets aforesaid, did then and there and thereby feloniously steal.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that the said Thomas Franklin, in the manner and form and at the time aforesaid, and in a place which had been ceded to and was and is under the jurisdiction of the United States unlawfully did commit the offence of grand larceny in the second degree; against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

(Sec. 2 (3) Chap. 576, Act of July 7, '98 and Secs. 528 & 531, Penal Code of New York.)

103 *Sixth Count.*

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that on the eighth day of September, in the year nineteen hundred and six, and for a long period of time prior thereto there has existed a certain tract of land in the County of Orange, and in said State and Southern District of New York, purchased and accepted by the Congress of the United States, by the consent of the Legislature of the said State of New York, and used by the United States as a fort and military post and reservation, under the name of West Point, over which said tract exclusive jurisdiction was, long before the said eighth day of September, in the year nineteen hundred and six, and subsequent to such purchase, ceded by the State of New York to, and ever since such cession, has been exercised by the United States, together with exclusive legislation in all cases whatsoever.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present that said Thomas Franklin on the said eighth day of September, in the year nineteen hundred and six, at and within the said fort and military post and reservation, under the name of West Point, aforesaid, in said State and Southern District of New York, being then and there the Treasurer of the United States Military Academy at West Point, aforesaid, and as such Treasurer, then and there having in his possession, custody and control, certain goods, chattels and personal property of all the cadets then forming the Cadet Corps of the United States Military Academy at West Point, aforesaid, the names of which said cadets are to the Grand Jurors unknown, and to give whose names would occupy too much space in this indictment, but for whose names reference is hereby made to the muster rolls of the said United States Military Academy on which appears a list of the said cadets, the true owners thereof, to wit, the same goods, chattels and personal property mentioned, described and set forth in the Third Count of this Indictment, reference to which is hereby made, of the value mentioned and
104 set forth therein, did feloniously appropriate the said goods, chattels and personal property to his own use, with intent to deprive and defraud the said cadets aforesaid, of the same, and of

the use and benefit thereof, and the same goods, chattels and personal property of the said cadets aforesaid, did then and there and thereby feloniously steal.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that the said Thomas Franklin, in manner and form and at the time aforesaid, and in a place which had been ceded to and was and is under the jurisdiction of the United States unlawfully did commit the offence of grand larceny in the second degree; against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

(Sec. 2 (3) Chap. 576, Act of July 7, 1898, and Secs. 528 & 531, Penal Code State of New York.)

HENRY A. WISE,
U. S. Attorney.

105 [Endorsed:] U. S. Circuit Court. The United States of America, vs. Thomas Franklin. Indictment. Grand Larceny. U. S. Rev. St. Sec. 2 (3) Chap. 576, Act of July 7, 1898, and Secs. 528 & 531 Penal Code, State of New York. Henry A. Wise, U. S. Attorney. A True Bill: Theodore H. Benedict, Foreman. U. S. Circuit Court, Southern District of N. Y. Filed June 15, 1909. John A. Shields, Clerk.

1909.
June 16. Pleads not guilty.
23. Demurrer argued.
July 1. Demurrer overruled.
1. Order overruling demurrer.
1. Def't pleads not guilty.
Nov. 4. Filed Supplemental Demurrer.
8. Demurrer overruled Memo. endorsed on brief. Defendant excepts.
Dec. 13. Ordered consolidated with Indictment No. 2-147 2/168.
13. Counts one, two and three Nolle prosequi entered.
13. Def't pleads guilty. Motion in arrest of judgment denied. Defendant excepts.
13. Def't sentenced to be imprisoned for two and one half years. Sentence to be executed in U. S. Penitentiary at Atlanta, Ga. Def't parolled until Dec. 14, 1909.
14. Def't released on bail in sum of ten thousand Dollars.
14. Filed recognizance.
14. " Appeal papers.

POOR COPY

106 *Demurrer.*

THE UNITED STATES OF AMERICA:

The Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, *ss:*

No. —.

THE UNITED STATES OF AMERICA
vs.
THOMAS FRANKLIN.

Grand Larceny, Sec. 2 (3), Chap. 576, Act of July 7, 1898, Sec-. 528 & 531, Penal Code, State of New York.

The defendant by his counsel now comes, and by leave of the Court, files his demurrer to the indictment presented herein against him, copy of which is hereto attached, and to each and every count therein, and for cause of demurrer he shows:

That as the said defendant was on the several dates alleged in said indictment and in each and every count therein and still is an officer in the military service of the United States, as reference to the Official Army Register for the years 1906, 1907, 1908, and 1909, published in compliance with an Act of Congress, will show, he is amenable to and triable under the Articles of War; therefore, the punishment for the offenses alleged in the said indictment and in each and every count therein, is provided for by a law of the United States, viz., Article 62, of Section 1342, Revised Statutes of the United States.

Wherefore this defendant asks judgment of the court that he be dismissed and discharged from the said premises specified in the said indictment and in each and every count therein.

Dated, New York, the 23rd day of June, 1909.

S. T. ANSELL,
Attorney for Defendant.

U. S. Circuit Court, Southern District of N. Y. Filed Jun- 23, 1909. John A. Shields, Clerk.

107 *Order Overruling Demurrer.*

At a Stated Term of the United States Circuit Court, Held in and for the Southern District of New York, at the United States Court House and Post Office Building, in the Borough of Manhattan, City, County, and State of New York, on the First Day of July, in the Year of Our Lord One Thousand Nine Hundred and Nine.

Present: The Honorable Learned Hand, Circuit Judge.

UNITED STATES OF AMERICA, Plaintiff,
vs.
THOMAS FRANKLIN, Defendant.

Sec. 5391 R. S., Sec. 2 (3), Chap. 576, Act of July 7, 1898, and Secs. 528 and 531, Penal Code of New York.

Whereas a demurrer to the indictment herein having been heretofore interposed by Thomas Franklin, the defendant above named, and the said demurrer having come on for argument on the 29th day of June, 1909, and after hearing S. T. Ansell, Esq., of counsel for the said defendant, Thomas Franklin, in support of the said demurrer, and Addison S. Pratt, Esq., Assistant United States Attorney, in opposition thereto, and due deliberation having been had.

Now on motion of Henry A. Wise, United States Attorney, it is

Ordered that the said demurrer to the said indictment be and hereby is overruled, and it is further

Ordered that the said defendant, Thomas Franklin, appear to plead to the said indictment at a term of the Circuit Court to be held on 1st, July, 1909, at 10:30 A. M.

LEARNED HAND,
U. S. Circuit Judge.

U. S. Circuit Court, Southern District of N. Y. Filed Jul- 1, 1909. John A. Shields, Clerk.

108 *Supplemental Demurrer to Indictment.*

Circuit Court of the United States for the Southern District of New York.

THE UNITED STATES OF AMERICA
vs.
THOMAS FRANKLIN.

5391 R. S. and Sec. 2 (3), Chap. 576, Act July 7, 1898.

And now comes, by leave of court, the defendant above named, by his counsel, and for further cause of demurrer says:

That the indictment filed against him on the 15th day of June,

1909, in each and every count thereof, and the matter therein contained in the manner and form as the same are stated and set forth are not sufficient in law, and that the said Thomas Franklin is not bound by the law of the land to answer the same, and this he is ready to verify.

And for further cause of demurrer to said indictment the said Thomas Franklin shows to the court here the following, that is to say:

(1) That each of the separate counts in said indictment is insufficient in law, and the said defendant Thomas Franklin demurs to each and every of said counts separately and severally, for the reason that all of the allegations contained in each and every of the said counts are insufficient to charge the said defendant with any offence against the laws of the United States, and are not sufficient to constitute a crime as against the defendant Thomas Franklin.

(2) That the said Fourth, Fifth, and Sixth counts of the said indictment are, and each of them is, insufficient in law in that the capacity of the defendant wherein he had possession, ...s-
109 tody, and control of the said property is not affirmatively alleged.

(3) That all of the counts of the said indictment are, and each of them is, insufficient in law, in that the said counts, all and several, do not negative the exception contained in the statute.

(4) That each of the separate counts in said indictment is further insufficient in law, and the said defendant Thomas Franklin demurs to each of said counts separately and severally, for the reason that said counts, contrary to the Sixth Amendment to the Constitution of the United States, do not, and neither of them does, apprise the defendant with reasonable certainty of the precise nature and cause of the accusation against him, and with a certainty sufficient to allow him to prepare his defense and to plead the judgment as a bar to any subsequent prosecution for the same offence.

Wherefore, for want of sufficient indictment in this behalf, the said Thomas Franklin prays judgment, and that by the court he may be dismissed and discharged from the said premises in the said indictment and each and every count thereof.

Dated, November 4th, 1909.

By S. T. ANSELL,
Attorney for the Defendant.

U. S. Circuit Court, Southern District of N. Y. Filed Nov. 4, 1909. John A. Shields, Clerk.

110 United States Circuit Court, Southern District of New York.

THE UNITED STATES
vs.
THOMAS FRANKLIN.

Opinion of Judge Hand on Demurrer to Indictment Under Section 5391 R. S., etc.

I do not in the least mean to reflect upon the wisdom of the counsel who filed these demurrers. To our great discredit, as I think, technicalities of the kind which it raises have been too often successful, to permit a conscientious counsel to forego their trial, whenever his ingenuity devises them. Their success does not redound to his disadvantage but to the court which has been misled. Any honest reasoning is quite legitimate, and the responsibility for mistakes must rest with the court. Nevertheless, I cannot resist saying that to adopt the construction which is suggested, would, in my judgment be to pervert the obvious meaning of the act quite unpardonably, and that too, by a metaphysic which is fatuously verbal and naively nonsensical. If the acts meant only to fix punishment they were to fix punishment for "offences" which could never exist, since they apply only to offences not "prohibited" by the laws of the United States. As no punishment could be fixed by Congress for any other offences, the exhilarating result ensues that Congress was fixing the penalties upon "offences" which were not such by any law, and was engaging in elaborate nonsense. While the act is badly drawn, its intent,—an intent not imputed but drawn from the words,—is perfectly obvious.

Demurrer overruled.

L. H., *J.*

U. S. Circuit Court, Southern District of N. Y. Filed Nov. 8, 1909. John A. Shields, Clerk.

111 *Order for Consolidation of Indictments.*

At the December Term of the United States Circuit Court for the Southern District of New York, in the Second Circuit, for the trial of criminal causes, held at the United States Court House and Post Office Building, in the Borough of Manhattan, City of New York, on the 13th day of December, 1909.

Present: Hon. Learned Hand, United States District Judge.

Docket No. 2149, 2147, 2168.

THE UNITED STATES OF AMERICA
vs.
THOMAS FRANKLIN, Defendant.

Upon motion of Henry A. Wise, Esq., United States Attorney for the Southern District of New York, it is

Ordered, that the indictment herein against the Defendant, filed

in this Court by the United States Grand Jury on the 15th day of June, 1909, charging the Defendant with violations of Section 5391, United States Revised Statutes and the Act of Congress of July 7, 1898, supplemental thereto and amendatory thereof; and the indictment herein filed by said grand jury on the same day, charging the Defendant with violations of Section 5438, United States Revised Statutes; and the indictment herein filed by the United States Grand Jury of the Southern District of New York on the 16th day of July, 1909, charging the Defendant with violations of Section 5438, United States Revised Statutes, be, and the same are,
112 hereby consolidated, under and pursuant to the provisions of Section 1024, United States Revised Statutes.

LEARNED HAND,
U. S. Judge.

(Endorsed:) Filed Dec. 13, 1909. J. A. Shields, Clerk U. S. Circuit Court, S. D. N. Y.

113 The Circuit Court of the United States, Southern District of New York.

THE UNITED STATES OF AMERICA
vs.
THOMAS FRANKLIN.

Motion in Arrest of Judgment.

And now comes the defendant in the above entitled action after conviction and before sentence and moves the Court to arrest judgment therein, and for grounds of said motion assigns the following, to wit:

First: Because the said fourth, fifth, and sixth counts of the indictment against the said defendant for grand larceny under Section 2, Chapter 576, Act of July 7th, 1898, to and of which the defendant pleaded and was found guilty, do not, nor does any one of the said counts, charge a criminal offense under the laws of the United States.

Second. Because the said Section 2, Chapter 576, of an Act of Congress, approved July 7th, 1898, entitled "An Act to protect the harbor defenses and fortifications constructed by the United States from malicious injury, and for other purposes", is unconstitutional and void.

Third. Because by the Constitution and the laws of the United States this Court here has no jurisdiction of the offense alleged to have been committed by this defendant in said fourth, fifth, and sixth counts of the said indictments, because he says the said Section 2, Chapter 576 of the said act of Congress, approved July 7th, 1898, confers upon the court here no jurisdiction of this cause, nor any legal power to hear, try, and determine the same, inasmuch as the punishment for the offense alleged in said indictment and in

each and every count thereof when committed by the Treas-
114 urer of the United States Military Academy, an officer of the Army of the United States, is provided for by Section 1342 Revised Statutes of the United States; and inasmuch as, by the said Constitution and laws, exclusive jurisdiction over said offense, when committed by a person subject to military jurisdiction, is vested in the properly constituted and authorized courts martial of the United States.

Fourth. Because the facts alleged in said counts under Section 5438 Revised Statutes of the United States do not, as alleged in said counts, or in any one of them, charge a criminal offence against the United States.

Dated this 13th day of December, 1909.

S. T. ANSELL,
Attorney for Defendant.

(Endorsed:) Filed Dec. 13, 1909. J. A. Shields, Clerk, U. S. Circuit Court, S. D. N. Y.

Motion denied. Defendant excepted.

115 Circuit Court of the United States, Southern District of New York.

THE UNITED STATES OF AMERICA
vs.
THOMAS FRANKLIN.

Order of Admission to Bail.

It appearing to the Court that a writ of error to the Supreme Court of the United States has been sued out and execution of the sentence suspended in the above cause.

Now, on motion of S. T. Ansell, Esq., attorney for defendant, that the said defendant be admitted to bail pending determination of the said writ of error, it is

Ordered That said defendant, Thomas Franklin, be admitted to bail pending the determination of an application to be made by the said defendant on January 3rd, 1910, to the Supreme Court of the United States to be admitted to bail, pending the determination of the said writ of error by the said Supreme Court, upon giving security in the sum of Ten Thousand Dollars ($10,000.), conditioned that if the said Thomas Franklin shall apply on said 3rd day of January, 1910, to the United States Supreme Court for admission to bail, and within twenty-four hours after a decision by said Supreme Court on said application, or at such other time or times as the said United States Circuit Court may order, shall personally appear and surrender himself into the custody of the United States Marshal, Southern District of New York, then said recognizance to be
116 void, otherwise to remain in full force and effect.

Dated at New York, this the 14th day of December, 1909.

LEARNED HAND,
Judge District Court.

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Dec. 14, 1909. John A. Shields, Clerk.

117 *Bail Bond.*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Be it remembered that on this 14th day of December, in the year of our Lord one thousand nine hundred and nine before me, John A. Shields, one of the Commissioners duly appointed by the District Court of the United States of America for the Southern District of New York, in the Second Circuit, to take acknowledgments of bail and affidavits and also to take depositions of witnesses in civil causes depending in the Courts of the United States pursuant to the provisions of the Acts of Congress in that behalf, personally came Thomas Franklin, principal, and Loton Horton and Louis F. Goodsell, sureties, and severally acknowledged themselves to owe to the United States, that is to say, the said Thomas Franklin, the sum of Ten Thousand Dollars and the said Loton Horton the sum of Ten Thousand Dollars, and the said Louis F. Goodsell the sum of Ten Thousand Dollars, separately to be levied and made of their respective goods and chattels, lands and tenements, to the use of the United States if default shall be made in the following condition, to wit:

Whereas at a Stated Term of the Circuit Court of the United States for the Southern District of New York, held on the 15th day of June, 1909, the Grand Inquest of the United States, within and for the District aforesaid, found a true bill of indictment against the said Thomas Franklin for having at the Southern District of New York on the 2nd day of July, 1906, and the 4th day of August, 1906, and the 8th day of September, 1906, committed the offense of grand larceny in the second degree on the military reservation known as West Point as by reference to the indictment now remaining on file and of record will more fully and at large appear; against
118 the peace of the United States and their dignity and contrary to the form of the Statute of the United States in such case made and provided and

Whereas at a Stated Term of the Circuit Court of the United States for the Southern District of New York, held on the 15th day of June, 1909, the Grand Inquest of the United States, within and for the District aforesaid, found a true bill of indictment against the said Thomas Franklin for having at the Southern District of New York on the 18th day of July, 1906, and the 21st day of September, 1906, unlawfully and willfully presented for approval to Albert L. Mills, as Superintendent of the United States Military Academy at West Point, and also to Hugh L. Scott as such Superintendent, certain claims upon and against the Government of the United States as by reference to the indictment now remaining on file and of record will more fully and at large appear; against the peace of the United States and their dignity and contrary to the form of the Statute of the United States in such case made and provided, and

Whereas at a Stated Term of the Circuit Court of the United States for the Southern District of New York, held on the 16th day of July, 1909, the Grand Inquest of the United States, within and for the

district aforesaid, found a true bill of indictment against the said Thomas Franklin for having at the Southern District of New York on the 18th day of July, 1906, and the 21st day of September, 1906, presented to Albert L. Mills, as Superintendent of the United States Military Academy at West Point, and also to Hugh L. Scott as such Superintendent, certain claims upon and against the Department of War of the United States and on and against the said Thomas
119 Franklin an officer of the United States as by reference to the indictment now remaining on file and of record will more fully and at large appear; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided; and

Whereas the said three indictments have by order of this Court bearing date the 13th day of December, 1909, been consolidated, and

Whereas the said Thomas Franklin has pleaded guilty to the said three indictments as consolidated, and has been sentenced by this Court on the 13th day of December, 1909, to be imprisoned for a term of two years and six months imprisonment, sentence to be executed at the United States Penitentiary at Atlanta, Georgia, and

Whereas, the said Circuit Court has allowed a writ of error to the Supreme Court of the United States, and the said writ of error has been filed in the office of the Clerk of the United States Circuit Court for the Southern District of New York from the aforesaid conviction, and has issued a citation upon the said writ of error returnable before the said Supreme Court of the United States on the 13th day of January, 1910, at the City of Washington, D. C., and

Whereas, the said United States Circuit Court did thereupon order that the said defendant be enlarged pending the determination of an application to be made by said defendant on January 3, 1910 to the Supreme Court of the United States to be admitted to bail pending the determination of said writ of error by the said Supreme Court upon giving sufficient security in the sum of $10,000.

Now, therefore, the condition of this recognizance is such that if the said Thomas Franklin shall apply on said third day of
120 January, 1910 to the United States Supreme Court for admission to bail and within twenty-four hours after a decision by the said Supreme Court on said application or at such other time or times as the said United States Circuit Court may order, shall personally appear and surrender himself into the custody of the United States Marshal for the Southern District of New York, then this recognizance to be void, otherwise to remain in full force and virtue.

THOS. FRANKLIN. [SEAL.]
LOTON HORTON. [SEAL.]
LOUIS F. GOODSELL. [SEAL.]

Acknowledged before me the day and year first above written.
JOHN A. SHIELDS,
U. S. Commissioner.

121 Approved:
ADDISON L. PRATT,
Asst. U. S. Att'y.

THE UNITED STATES
vs.
THOMAS FRANKLIN.

THE UNITED STATES OF AMERICA,
Southern District of New York, ss:

Louis F. Goodsell, being duly sworn says, that he resides at Highland Falls, Orange County, New York; that he desires to offer himself as surety for the appearance of the above named defendant Thomas Franklin in accordance with the provisions of the bond hereto annexed, and makes this affidavit for the purpose of securing his acceptance as such surety. That he is the owner in fee simple of two certain lots, pieces, or parcels of land with the buildings thereon situated, Highland Falls, Orange County, New York and known as Post Office Building and Citizens National Bank Building; that the present value of said property is at least the sum of $34,000; that there is no mortgage outstanding on said premises; that there are no other liens or incumbrances on said property: I also am sole owner in fee simple and clear of encumbrance of 600 acres in and about Highland Falls, Orange County, New York, and the value of said land is upwards of $12,000; and of divers other parcels whose present value is upwards of $16,000; that there are no judgments against him in the courts of this state or elsewhere; that he is on no other bond except that of the Treasurer of the County of Orange to the amount of $25,000; that he is worth the sum of $60,000 over and above his just debts and liabilities.

LOUIS F. GOODSELL.

Sworn to before me this 14th day of Dec. 1909.
JOHN A. SHIELDS,
United States Commissioner for the Southern District of New York.

122

THE UNITED STATES
vs.
THOMAS FRANKLIN.

THE UNITED STATES OF AMERICA,
Southern District of New York, ss:

Loton Horton being duly sworn says, that he resides at No. 117 West 77th St. Borough of Manhattan, City of New York; that he desires to offer himself as surety for the appearance of the above named defendant Thomas Franklin in accordance with the provisions of the bond hereto annexed, and makes this affidavit for the purpose of securing his acceptance as such surety. That he is the owner in fee simple of a certain lot, piece or parcel of land with the buildings thereon situated in the Borough of Manhattan, City of New York and known as No. 117 West 77th Street, New York City; that he purchased said property about 1893; that the purchase price was the sum

of $31,000; that the present value of said property is at least the sum of $35,000; that he has had an offer for the purchase of said property of $—; that there is a mortgage outstanding on said premises of $18,000. that there are no other liens or incumbrances on said property; that there are no judgments against him in the courts of this state or elsewhere; that he is on no other bond; that he is worth the sum of upwards of $20,000. over and above his just debts and liabilities.

LOTON HORTON.

Sworn to before me this 14th day of Dec. 1909.

JOHN A. SHIELDS,
United States Commissioner for the Southern District of New York.

123 [Endorsed:] U. S. vs. Thomas Franklin. Bail Bond. Filed Dec. 14, 1909. John A. Shields, Clerk U. S. Circuit Court, S. D. N. Y.

124 The Circuit Court of the United States, Southern District of New York.

THE UNITED STATES OF AMERICA
vs.
THOMAS FRANKLIN.

Defendant's Assignment of Errors.

In the matter of the conviction and sentence of Thomas Franklin in said Court now comes the said defendant, by his attorney, S. T. Ansell, and says that there are manifest errors in the judgment of said court in the above-named cause, and as errors assigns the following:

First. The Court erred in holding and deciding that the said Circuit Court of the United States has, under the Constitution and laws of the United States, jurisdiction of this cause and any legal power to hear, try, and determine the same notwithstanding that the punishment for the alleged offences in said indictment and in each and every count thereof, when committed by the Treasurer of the United States Military Academy, an officer of the Army of the United States is provided for by Section 1342 Revised Statutes of the United States; and notwithstanding that, by the said Constitution and laws, exclusive jurisdiction of said offense, when committed by a person subject to military jurisdiction, is vested in the properly constituted and authorized courts-martial of the United States; and notwithstanding further that said Circuit Court has no jurisdiction except when punishment for the said offence is not provided for by any other law of the United States.

Second. The Court erred in overruling the demurrers to the indictment.

Third. The Court erred in overruling the supplemental
125 demurrers to the indictment.

Fourth. The Court erred in denying the motion in arrest of judgment.

Fifth. The Court erred in its final judgment in said cause.

Wherefore the defendant prays that the judgment of said Court be reversed and for such other and further relief as may be deemed just and necessary in the premises.

Dec. 14/09.

S. T. ANSELL,
Attorney for Defendant.

U. S. Circuit Court, Southern District of N. Y. Filed Dec. 14, 1909. John A. Shields, Clerk.

126 The Circuit Court of the United States, Southern District of New York.

THE UNITED STATES OF AMERICA
vs.
THOMAS FRANKLIN.

Certificate.

The Circuit Court of the United States for the Southern District of New York hereby certifies to the Supreme Court of the United States that on the 23rd day of June, 1909, the defendant in the above entitled action interposed a demurrer to the indictment against him specifying, among other grounds, (1) that the said indictment does not state facts sufficient to constitute a crime against the United States, and (2) that the said offense alleged in the said indictment to have been committed by the said defendant was otherwise punishable under Section 1342 Revised Statutes, by the properly constituted Courts-Martial of the United States, which said demurrer was by this Court overruled; that the cause came on for trial before this Court and after conviction defendant moved in arrest of judgment and specified among others the following grounds: (1) That the said Section 2, Chapter 576, of an act of Congress, approved July 7th, 1898, is unconstitutional and void and presented to the Court that the same was a delegation by Congress of their legislative function to the several state legislatures, and that the same was not a law or rule because of the inequality of punishment awarded by said act; and (2) That the said Circuit Court has no jurisdiction of the cause, nor any legal power to hear, try, and determine the same, which motion was by this Court denied; all of which appears by and
127 is more fully set out in the record in this cause. And the defendant having petitioned this Court that a writ of error issue to the Supreme Court of the United States because of the constitutional and jurisdictional questions involved and said writ having been allowed, now, therefore, this Court certifies that in said cause the constitutionality of the said Statute is in issue, and hereby

certifies to the Supreme Court of the United States said constitutional question raised by the said motion in arrest of judgment; and this court further certifies that the jurisdiction of said Circuit Court is in issue, and hereby further certifies to the Supreme Court of the United States said question of jurisdiction raised by the said demurrers and by the motion in arrest.

Given under my hand and the seal of said Court at the Borough of Manhattan in the City of New York, in the District and Circuit aforesaid, this the 17th day of December in the year of our Lord one thousand nine hundred and nine.

LEARNED HAND,
Judge of the District Court of the United States for the Southern District of New York, Second Circuit.

U. S. Circuit Court, Southern District of N. Y. Filed Dec. 21, 1909. John A. Shields, Clerk.

128 Circuit Court of the United States, Southern District of New York.

THOMAS FRANKLIN, Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA, Defendant in Error.

Affidavit of Service.

Personally appeared before me the undersigned authority, S. T. Ansell, who being duly sworn says:

That he is the attorney for the plaintiff in error in the above cause.

That as such on the 14th day of December, 1909, at the office of the U. S. Attorney for the Southern District of New York, in the Federal Building, Borough of Manhattan, New York City, he served upon H. A. Wise, Esq., U. S. Attorney for said district a copy of the writ of error, citation, assignment of errors and certificate, in said cause, by delivering the same to him personally in his office at the time and place aforesaid.

S. T. ANSELL.

Sworn to and subscribed before me this the 17th day of December, 1909.

[Seal Edward T. McEnany, United States Commissioner, Southern District of New York.]

E. T. McENANY,
U. S. Commissioner for Said District.

[Endorsed:] 2. 149. U. S. Circuit Court, Southern District N. Y. Filed Dec. 20, 1909. John A. Shields, Clerk.

129 By the Honorable —— ——, One of the Judges of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at the Capitol in the City of Washington, in the District of Columbia, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the Circuit Court of the United States for the Southern District of New York, wherein Thomas Franklin is plaintiff in error and the United States of America are defendants in error, to show cause, if any there be, why judgment in said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 14 day of December in the year of our Lord one thousand nine hundred and nine, and of the Independence of the United States the one hundred and thirty-fourth.

LEARNED HAND,
Judge of the District Court of the United States for the Southern District of New York, in the Second Circuit.

130 [Endorsed:] 2. 149. Circuit Court of the United States for the Southern District of New York. United States of America vs. Thomas Franklin. E. & A. D. 3020. Citation. S. T. Ansell, Counsel for Defendant. U. S. Circuit Court, Southern District, N. Y. Filed Dec. 14, 1909. John A. Shields, Clerk.

Endorsed on cover: File No. 21,962. S. New York C. C. U. S. Term No. 736. Thomas Franklin, plaintiff in error, vs. The United States. Filed January 14th, 1910. File No. 21,962.